TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 134

THE UNITED STATES, PETITIONER

vs.

LOUIS TOWNSLEY

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

PETITION FOR CERTIORARI FILED JUNE 6, 1944
CERTIORARI GRANTED OCTOBER 9, 1944

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 1086

THE UNITED STATES, PETITIONER

vs.

LOUIS TOWNSLEY

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

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1 In the Court of Claims

No. 45097

LOUIS TOWNSLEY

v.

THE UNITED STATES

Petition

Filed March 14, 1940

To the Honorable the Court of Claims:

The plaintiff, Louis Townsley, respectfully represents:

I. He was during all the times hereinafter mentioned a citizen of the United States and a resident of the Panama Canal Zone.

II. He was employed by the Panama Canal at the monthly rates of pay, in the occupations and during the periods of time as follows:

Occupations	Rate of pay	Periods of time
Operator (Dredge)	$306	3/28/34 to 1/ 6/37
Chief Operator (Dredge)	311	1/ 7/37 to 11 30/37
Master (Dredge)	336	12/ 1/37 to 8//31/39

2 III. Plaintiff held the position hereinbefore enumerated by virtue of an appointment by the Governor of the Panama Canal and the compensation for such position was determined by a wage fixing authority consisting of the Governor of the Panama Canal acting with the assistance of a wage board appointed by the Governor, under the authority conferred upon him by the Act of August 24, 1912, 37 Stat. 561, and the Executive Order of February 2, 1914, issued pursuant to the said Act.

IV. Since March 28, 1934, plaintiff, has been required to and has performed work for a period in excess of the regular working week of not to exceed 40 hours per week, but has not received pay for any of the time in excess of 40 hours per week, he therefore claims pay for the overtime work in excess of 40 hours per week performed by him at the rate of time and one-half, amounting to approximately $5,800.00, but subject to exact computation by the Panam Canal.

V. Claim is made under and is based upon the following, among other provisions of statute:

Section 23 of the Act of March 28, 1934, 48 Stat. 522 (Canal Zone Code, Title 2, § 81, as amended by the Act of July 9, 1937, 50 Stat. 486–7) providing for a regular working week not to exceed 40 hours per week, and further providing that where employees are required to work in excess of 40 hours per week they shall be paid compensation for such overtime at the rate of time and one-half.

VI. The Comptroller General of the United States has ruled that those employees coming within the terms of the Act of March 28, 1934, whose compensation is fixed on a monthly or annual basis are not entitled to the benefit of the provision therein for overtime pay.

3 VII. No other action has been had on said claim in Congress or by any of the departments; no person other than the plaintiff is the owner thereof or interested therein; no assignment or transfer of this claim, or of any part thereof or interest therein has been made; the plaintiff is justly entitled to the amount herein claimed from the United States, after allowing all just credits and offsets; the plaintiff has at all times borne true allegiance to the Government of the United States and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government. The plaintiff is a citizen of the United States. And the plaintiff claims $5,809.

KING & KING,
Attorneys for Plaintiff.

[*Duly sworn to by George R. Shields; jurat omitted in printing.*]

5 *General traverse*

Filed April 23, 1943

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

FRANCIS M. SHEA,
ETF. *Assistant Attorney General.*

Argument and submission of case on merits

On June 9, 1943, argument of case on merits begun by Mr. Fred W. Shields for plaintiff, and by Mr. Wilbur R. Lester for defendant.

On June 10, 1943, argument concluded and case submitted on merits by Mr. Fred W. Shields for plaintiff, and by Mr. Wilbur R. Lester for defendant.

Proceedings after argument and submission of case on merits

On October 4, 1943, the court filed findings of fact and conclusion of law, with judgment for plaintiff in the sum of $5,157.57. Opinion by Madden, J.

On November 23, 1943, the defendant filed a motion for an extension of time within which to file a motion for a new trial to January 5, 1944.

On November 30, 1943, the court entered the following order on said motion:

7

ORDER

IT IS ORDERED this 30th day of November 1943, time for filing of defendant's motion for a new trial is extended to December 20, 1943, and said motion is directed to be placed on the law calendar for oral argument on Monday, January 3, 1944.

Argument and submission on defendant's motion for a new trial

On January 3, 1944, the defendant's motion for a new trial was argued and submitted by Mr. Assistant Attorney General Francis M. Shea for defendant, and by Mr. Herman J. Galloway for plaintiff.

Order overruling defendant's motion for a new trial; withdrawing former findings, judgment and opinion, and filing new findings, judgment for plaintiff and opinion

March 6, 1944

ORDER

This cause comes before the court on defendant's motion for a new trial, and on consideration thereof

It is ordered this 6th day of March 1944, that said motion be and the same is overruled.

It is further ordered, on the court's own motion, that the special findings of fact, conclusion of law, and opinion filed herein October 4, 1943, be and the same are vacated and withdrawn, and new special findings of fact, conclusion of law entering judgment for plaintiff in the sum of $5,157.57, with an opinion by Judge Madden, be and the same are now filed in lieu thereof.

By the Court.

RICHARD S. WHALEY,
Chief Justice.

9 *Special findings of fact, conclusion of law and opinion of the court by Madden, J., Dissenting opinion by Whitaker, J.*

Filed March 6, 1944

Mr. Fred W. Shields for the plaintiff. Messrs. Harvey C. Long and Harry D. Ruddiman and King & King were on the briefs.

Mr. Wilbur R. Lester, with whom was Mr. Assistant Attorney General Francis M. Shea, for the defendant.

This case having been heard by the Court of Claims, the court, upon the evidence and the report of a commissioner, makes the following

Special findings of fact

1. Plaintiff is a citizen of the United States, and was employed by the Panama Canal, on a monthly basis in various capacities from December 18, 1909, to August 31, 1939, when he retired.

2. Plaintiff brings this action to recover for overtime, for the period March 28, 1934, to August 31, 1939, computing the time on a 40-hour week basis, under the provisions of Section 23 of the act of March 28, 1934, 48 Stat. 522, which reads as follows:

"SECTION 23. The weekly compensation, minus any general percentage reduction which may be prescribed by Act of Congress, for the several trades and occupations, which is set by wage boards or other wage-fixing authorities, shall be reestablished and maintained at rates not lower than necessary to restore the full weekly earnings of such employees in accordance with the full-
10 time weekly earnings under the respective wage schedules in effect on June 1, 1932: Provided, That the regular hours of labor shall not be more than forty per week; and all overtime shall be compensated for at the rate of not less than time and one-half."

3. The general conditions of employment for employees of the Panama Canal were fixed by Executive Order No. 1888, promulgated by the President on February 2, 1914, as amended by executive Order No. 2517 promulgated by the President January 15, 1917, which executive orders are in evidence as part of stipulation exhibits A and B, respectively, and are made part hereof by reference.

These orders included the following provisions:

"1.-The salaries or compensation of employees shall in no instance exceed by more than twenty-five per centum the salaries or compensation paid for the same or similar services to persons employed by the Government in Continental United States, as determined by the Governor of the Panama Canal.

"8. All appointments shall be made by the Governor of the Panama Canal, or by his authority, except the district judge, district attorney, marshal, clerk of district court, and his assistant.

"11. Employees whose salaries are fixed on a monthly or annual basis will receive no pay for overtime work.

"12. Employees above the grade of laborer, appointed with rates of pay per hour or per day, will not be employed over eight hours in any one calendar day, except in case of emergency. The time such employees work over eight hours in one calendar day, and time worked on Sundays and regularly authorized holidays, including January 1st, February 22nd, May 30th, July 4th, Labor Day, Thanksgiving Day, and December 25th, shall be considered overtime for which time and one-half will be allowed. Such employees who work on the days prior and subsequent to the holidays specifically named above will be allowed their regular pay for eight hours for such days, in addition to pay for any work performed.

"20. All employees who are citizens of the United States, and aliens whose compensation is more than $75 per month or 40¢ per hour, shall be entitled to leave privileges.

"21. Leave will be divided into three classes, viz: (1) annual leave, (2) cumulative leave, and (3) travel leave.

"26. In cases of hourly and per diem employees annual
11 leave on account of sickness or injury shall be based upon a day of eight hours.

"29. Thirty days' cumulative leave will be allowed each employee paid on a monthly or annual basis for each year of his service, and twenty days to each employee paid on an hourly basis. This leave will be due after completing ten months' service each year and may be taken when the employee's service can be spared. It may taken anually or left to accumulate to the credit of the employee, provided, however, that the maximum number of days' leave with pay of all kinds which may be granted at any one time or which may be commuted into a cash payment at termination of service is 120.

"42. Office hours and hours of labor will be fixed by the Governor within the limits prescribed by law."

4. During the period from March 28, 1934, to January 6, 1937, plaintiff was employed by the Panama Canal as operator or leverman aboard the dredge *Las Cruces*, at a monthly salary of $306; from January 7, 1937, to November 30, 1937, he was employed as chief operator aboard the same dredge, at a monthly salary of $311; and from December 1, 1937, to August 31, 1939, he was employed as master of the same dredge at a monthly salary of $336. The salary so paid the plaintiff was in accordance with the

rates fixed by the Governor of the Panama Canal for the positions held by plaintiff.

5. The dredge *Las Cruces* was a diesel electric hydraulic pipe line dredge, with a twenty-four inch discharge pipe, 224 feet in length, 50 feet beam, drawing 14 feet of water, displacing 2,500 tons, with a main power plant of four 911 H. P. diesel engines, each of which was connected to a 550-K. W., 270-volt main generator, and a 220-K. W., 120-volt auxiliary generator.

6. During the period from March 28, 1934, to August 31, 1939, it regularly operated on a schedule of 24 hours each day, except Sunday, divided into three eight-hour shifts, and was engaged principally in maintaining canal channels and terminal harbors. Occasionally it operated on Sundays, especially when engaged on important work which had to be completed as quickly as possible. Repairs and replacements of the machinery and equipment were usually made on Sundays to avoid loss of dredging time during the week. Such repairs and replacements were scheduled by the master of the dredge, and he made arrangements for the force of men required to perform the work, and was usually present to supervise the work, which was normally completed during the day watch on Sundays.

7. The master of the dredge was in charge of all operations of the dredge, including disposition of spoil, supervision of fills, construction of temporary spillways, and other control works directly connected with the operation of such equipment. He was required to have a license as Master, Pipe Line Suction Dredge, issued by the Board of Local Inspectors of the Panama Canal. He operated the dredge when required to do so, was either aboard or in the vicinity of the work being done eight hours each day, and was available for emergency calls at all hours.

8. During his employment as master of the dredge *Las Cruces*, from December 1, 1937, to August 31, 1939, plaintiff's normal duties required his presence on the dredge or on related work away from the dredge, 8 hours per day, 6 days per week, usually working from 7 a. m. to 3 p. m. He was subject to call for duty at any hour of the day or night in case of a major break-down of the equipment or any other unusual circumstances.

9. Compensatory time off was granted in accordance with the regulations issued by the Governor of the Panama Canal. As a rule definite schedules for relief were prepared in advance. Overtime required was arranged orally by the master to suit the exigencies of the work. The master usually fixed his own overtime requirements. However, in some instances he could be specifically instructed by his supervisor to handle some work at such a time that overtime on his part would be required. He might

also receive notice of emergencies requiring special duty outside of regular working hours, from his subordinates, or through his supervisor.

Panama Canal Personnel Regulations, Paragraphs 48.2 and 48.3 were as follows:

"48.2. Recuperative time for monthly employees working irregular hours.—In case a monthly employee, regularly employed in the daytime, works at night, he may be allowed time off
13 the following day if needed for rest or recuperation without having time charged against his leave.

"48.3. Relief time for Sunday or holiday work.—A monthly employee who works regularly and is required to work on a Sunday or holiday may be granted relief time for such service by the head of his department or division when it is practicable to do so without detriment to the work or incurring additional expense, but the granting of such time is not a vested right. When such time is allowed to an employee whose rate of pay is computed on a 28-day month, it shall be granted on a basis of 28 days' service each month except that during the month of February he may be granted two days off. This does not apply to employees engaged on certain classes of work for which special rules for allowing relief time have been approved by the Governor."

Masters ordinarily did not take advantage of the relief afforded by Paragraph 48.2, and they reported for work the following day if able to do so. If the plaintiff, as master, wished to leave his work for personal reasons part of a day, there ordinarily would have been no objection.

10. The chief operator stood a regular 8-hour watch as operator (leverman), and was acting master during the absence of the master, which absences averaged about two months a year. He was in charge of and responsible for all equipment aboard the dredge when the master was not aboard. He was required to hold a license as Master, Pipe Line Suction Dredge.

While employed as chief operator, dredge *Las Cruces*, from January 7, 1937, to November 30, 1937, plaintiff was required to stand a regular 8-hour watch as operator, 6 days each week. Such work as plaintiff performed outside his regular working hours or on Sundays and holidays was compensated for as provided by Paragraphs 48.2 and 48.3, Panama Canal Personnel Regulations, as above quoted. Plaintiff customarily worked on day shifts, but on occasion performed work on night shifts. As chief operator he was a representative of the master during his absences from the dredge, and he also served as acting master during the master's absences on leave.

11. An operator of a dredge stood a regular 8-hour watch as operator (leverman), 6 days a week, and was in charge of

14 and responsible for all equipment at all times when the master and chief operator were not aboard. He was required to hold a license as Master, Pipe Line Suction Dredge. He was in charge of the dredge during his watch, and directed the activities of pipe line foremen and deckhands.

While employed as operator on the dredge *Las Cruces*, from March 28, 1934, to January 6, 1937, plaintiff was required to stand a regular 8-hour watch on the basis of a 48-hour week. Such work as plaintiff performed outside his regular working hours or on Sundays and holidays, was compensated for as provided by Paragraphs 48.2 and 48.3, Panama Canal Personnel Regulations, quoted in finding 9.

12. April 9, 1919, the Governor of the Panama Canal created a Board on Rates of Pay—Gold Roll, by a written communication, reading in part as follows:

"THE PANAMA CANAL, EXECUTIVE OFFICE,
"*Balboa Heights, C. Z., March 31, 1919.*

"*To all concerned:* * * *

"You are hereby appointed as a board to advise me on wages for The Panama Canal and Panama Railroad employees on the gold roll who are members of the American Federation of Labor.

"(1) The Board is an advisory one to recommend rates of pay to the Governor and is without authority to make promises except as to its recommendations.

"(2) This Board will recommend wages for positions filled in whole or part by employees who are members of the American Federation of Labor.

"3) Rates will generally be equal to States' rates plus 25 percent for similar positions in the Government service in continental United States. If there are no similar Government positions, Canal rates may be based on nongovernment ones, plus 25 percent; provided, however, such rates properly coordinate with similar or related ones in the Canal service which have been established directly on Government ones.

"(4) The Board will not make recommendations for individuals but for positions."

The foregoing, together with other documents from which quotations are made in this report, are in evidence as exhibits to the stipulation of plaintiff and defendant and are made a part hereof by reference.

15 13. May 21, 1927, the Governor of the Panama Canal issued an announcement covering a change in the name of

the Board on Rates of Pay—Gold Roll to the "Wage Board," which provided in part as follows:

"BALBOA HEIGHTS, C. Z.,
"*May 21, 1927.*

* * * * *

"4. Cases referred to the Board shall include, in general, those relating to hourly rates for all crafts, monthly rates derived from hourly rates, and monthly rates such as those for employees of floating equipment, in the transportation department of the Panama Railroad, or elsewhere, which are derived from rates paid for the same or similar services in the United States. Cases involving the rates for clerical positions will not ordinarily be referred to the Board.

"5. Employees who desire wage adjustments should first take up the matter with their official supervisors in their department or division. If a satisfactory adjustment is not secured they should forward their claims to the Governor, requesting submission to the Wage Board. Such claims may be forwarded either directly to the Governor or through labor organizations.

"6. Claims for changes in rates of pay should be accompanied in each instance by a written statement of the rate desired and the arguments which are considered to justify it, together with such data as the employee or group of employees may have in support of the claim.

"7. In recommending rates the Board will be guided by the provisions of Act of Congress of August 24, 1912, and of Executive Order of Feburary 2, 1914, which provide that, 'the salaries or compensation of employees shall in no instance exceed by more than twenty-five per centum the salaries or compensation paid for the same or similar services to persons employed by the Government in continental United States,' and by the general Panama Canal policy of paying twenty-five per centum over pay for comparable work in Government service in the continental United States. When no similar Government positions exist, Canal rates may be recommended on the basis of not to exceed twenty-five per centum above salaries or compensation in non-governmental positions, provided that such rates coordinate with those of other employees of The Panama Canal and Panama Railroad."

16 14. Personnel Regulations of the Panama Canal Zone, dated March 1, 1928, contained, among others, the following paragraphs:

"33. WAGE BOARD

"33.1 Membership.—The Wage Board, formerly known as the 'Board on Rates of Pay—Gold Roll,' will be composed of 2

members; 1 appointed by the Governor and 1 nominated by the Panama Metal Trades Council and approved by the Governor The latter member must be a bona fide employee of The Panama Canal or the Panama Railroad.

"33.3 Cases handled.—Cases referred to the Board shall include, in general, those relating to hourly rates for all crafts, monthly rates derived from hourly rates, and monthly rates such as those for employees of floating equipment, in the transportation department of the Panama Railroad, or elsewhere, which are derived from rates paid for the same or similar services in the United States. Cases involving the rates for clerical positions will not ordinarily be referred to the Board."

15. Based on the opinion and recommendations of Major R. A. Wheeler, a member of the Wage Board, the Governor of the Panama Canal issued a memorandum and schedule of rates and pay for positions on certain floating equipment as follows:

"BALBOA HEIGHTS, C. Z.,
"*October 31, 1930.*

"Memorandum for Marine Superintendent
Superintendent of Dredging

"RULES OF PAY-POSITIONS ON FLOATING CRAFT

"1. The following memorandum from the Governor is quoted for your information and guidance:

"BALBOA HEIGHTS, C. Z.,
"*October 29, 1930.*

"1. The increases in pay allowed for any position on pipe line suction dredges when operating with a relay or when the master is absent are hereby discontinued, effective December 1, 1930.

"2. Major Wheeler's schedule will be used hereafter as a guide in adjustments of pay on the floating craft of the Marine and Dredging Divisions, unless in the meantime positions can be based on craft operated by the United States Government.

17 "3. No rates of pay will be reduced (except as indicated in paragraph 1 above) but when basic rates are adjusted upward other positions will not move upward accordingly, unless Major Wheeler's schedule shows an increase is due. When the basic rates are lowered by any stated amount all positions will move downward the same amount.

"4. Thus there will be a gradual approach toward the differentials recommended by Major Wheeler, but no changes in rates (except as indicated in paragraph 1) will be made either for men now in service or for new men taken on or promoted. Furthermore, the differentials recommended by Major Wheeler are to be

considered as tentatively adopted, and if any specific inconsistencies are found in his schedule the matter may be taken up by a separate letter concerning any one or more positions.

"H. BURGESS, *Governor.*

"2. In conformity with the foregoing, until approval otherwise is authorized, rates of pay (except as specifically stated to the contrary) of all positions on the following floating equipment, and rates of pay for certain shore positions coordinated with floating equipment positions, shall be based on one controlling rate in the Dredging Division—and that is the rate for master of pipe line suction dredge, which rate in turn shall be based upon rates paid on plant operated by the Engineer Corps, U. S. Army, in the United States, derived in accordance with the method of computation heretofore approved.

"(a) Pipe line suction dredges—all positions.

* * * * *

"3. The schedule of differentials proposed by Major Wheeler and approved tentatively by the Governor is not reproduced in full in this memorandum due in part to the burden of typing and in part to the fact that the pay of none of the employees concerned is affected at this time (except as indicated in paragraph 1 of Governor Burgess' memorandum), nor will be affected until such time as adjustments are made in the rate for master pipe line suction dredge, in conformity with changes in basic rates in the United States. The following tabulation, however, shows the proposed coordination in rates of pay for the greater portion of the various floating equipment positions and the relation between the master's rate on each piece of equipment to the rate for master, pipe line suction dredge:

Equipment	Rate of pay for—								
	Master	Chief engr.	Engr.	Chief opr.	Opr.	Mate	Foreman	Master's differential with respect to rate for master P. L. S. D.	Change
Las Cruces	$336	$311	$266	$311	[1]$276	$231	$211	+$20	0

[1] This amount is apparently an error, as "Memorandum for Personnel Bureau" dated December 2, 1929 (Plaintiff's Exhibit No. 4), shows the rate of pay for operators to be $306 per month. See also Finding 4.

"4. Dredging and Marine Division employees affected who are desirous of ascertaining changes in differentials which have been

tentatively approved may obtain this information from any of the following sources:

"Marine Superintendent.
"Superintendent, Dredging Division.
"Bureau of Statistics, Executive Dept.
"Labor Member, Wage Board."

16. Section 23 of the act of March 28, 1934, has been quoted in finding 2. April 4, 1934, the Chief of the Washington Office of the Panama Canal wrote to the Comptroller General of the United States as follows:

"The Governor of The Panama Canal has requested by radio decision as to the application of Section 23 of the Independent Offices Appropriation Act for the fiscal year ending June 30, 1935 (Public, No. 141), which was passed on March 28, 1934. That section reads as follows: [Here follows Section 23, quoted in finding 2.]

"The Governor's radiogram of April 3, 1934, in which explanation is made of the situation and the questions to which answers are desired are propounded, read as follows:

"Interpretation is desired regarding application of Act to Canal employees. Twenty-five hundred American employees in Canal service [are] now working following hours per week:

Administrative and clerical workers	42
Shop and building trade craftsmen	48
Operators locks, power plants, pumping plants	48 or more
Pilots and employees on floating equipment	48 or more
Physicians, nurses, policemen, and firemen	50 or more

19 "For employees not under classification, compensation of these employees is fixed by the Governor with assistance of wage boards. Ascertain if Section 23 of Independent Offices Act requires payment of overtime after 40 hours' service per week for

"(1) Employees in artisan and mechanical groups compensated at hourly rate of pay;

"(2) Similar employees compensated at monthly and annual rates of pay;

"(3) Employees on floating equipment, policemen, firemen, etc.;

"(4) Physicians, nurses, clerical, and allied workers under classification * * *"

The Comptroller General rendered his decision on the foregoing matters on April 12, 1934, and subsequently, in response to a request from the Governor of the Panama Canal for reconsideration and for answers to several other specific questions, he rendered a second decision on August 25, 1934. He held that Section

23 was applicable to employees of the Canal Zone, including monthly employees, and that it required that the regular hours of work of such employees be limited to 40. He also held that no additional compensation for overtime was authorized as to employees who were on a monthly pay basis. The decisions of the Comptroller General of April 12, 1934, A–54726, and August 25, 1934, are printed in 14 Comp. Gen. 156–165.

17. The records of the Panama Canal do not disclose that plaintiff or any other pipeline suction dredge operator made any formal demand to be placed on a 40-hour-week schedule or to be paid overtime for time worked in excess of 40 hours per week after March 28, 1934. Immediately before his retirement, however, plaintiff sent the following letter to the Executive Secretary under date of August 29, 1939:

"As it is my belief that all Dredgmen should have been given the 40-hour week I propose to submit a claim to the Court of Claims.

"I request a statement to be used in presenting my claim, showing time worked by me in excess of 40 hours per week since the effective date of the Thomas Amendment.

"Would also like to have certified copies of wage board meetings and Governor's approval of wage board recommendations whereby my wages were established.

"I would be glad to confer with you and agree as to the presentation of my claim."

Since plaintiff was employed and compensated on a monthly basis, the official records of the Canal do not show the hours actually worked by him, and plaintiff's request in said letter for a record of the number of hours worked could not be granted.

18. The timekeeper for the master of the dredge *Las Cruces* kept a book or log purporting to show the days each employee reported for work. Plaintiff made a copy from that book of the days worked by him, and made a calculation reduced from a monthly basis to a daily and hourly basis and from the figures thus obtained, computed his overtime as follows:

"105½ days of 8 hours each in excess of 40 hours a week from March 28, 1934, to January 6, 1937, as operator.

"45 days of 8 hours each in excess of 40 hours a week from January 7, 1937, to November 30, 1937, as a chief operator.

"84 days of 8 hours each in excess of 40 hours a week from December 1, 1937, to August 31, 1939, as master."

19. Plaintiff's salary as operator was $306 a month, which he reduced to $14.12 per day by computing it on a 40-hour week basis. His salary as chief operator was $311 a month reduced to $14.35 a day by computing it on a 40-hour per week basis. His

salary as master was $336 a month, reduced to $15.51 per day by computing it on a 40-hour a week basis.

20. Upon the basis stated in findings 18 and 19 plaintiff's overtime compensated for at time and one-half would be as follows:

105½ days as operator	$2,234.49
45 days as chief operator	968.40
84 days as master	1,954.68
Total	5,157.57

Conclusion of law

Upon the foregoing special findings of fact, which are made a part of the judgment herein, the court concludes, as a matter of law, that plaintiff is entitled to recover $5,157.57.

21 It is therefore adjudged and ordered that plaintiff recover of and from the United States the sum of five thousand one hundred fifty-seven dollars and fifty-seven cents ($5,157.57).

Opinion

MADDEN, Judge, delivered the opinion of the court:

The plaintiff was an employee of the Panama Canal. During the period here in question, March 28, 1934, to August 31, 1939, he was, successively, operator or leverman, chief operator, and master, of the dredge *Las Cruces*, which was operated by the Government in the Canal. He was employed and paid on a monthly basis. He worked eight hours per day, six days per week. He claims that under Section 23 of the act of March 28, 1934, 48 Stat. 522, forty hours per week was set as the regular work period for his job, and payment of time and a half for overtime was directed, hence he should have been paid at the rate of time and a half for his sixth day of work in each week throughout the period.

Section 23 is as follows:

"The weekly compensation, minus any general percentage reduction which may be prescribed by Act of Congress, for the several trades and occupations, which is set by wage boards or other wage-fixing authorities, shall be reestablished and maintained at rates not lower than necessary to restore the full weekly earnings of such employees in accordance with the full-time weekly earnings under the respective wage schedules in effect on June 1, 1932: Provided, That the regular hours of labor shall not be more than forty per week; and all overtime shall be compensated for at the rate of not less than time and one-half."

On April 4, 1934, which was within a few days after Section 23 was enacted, the Governor of the Panama Canal sought the de-

cision of the Comptroller General as to whether Section 23 was applicable to employees of the Panama Canal, and if so whether it required the payment of overtime to certain described classes of employees. See finding 16. The Comptroller General answered on April 12 that Section 23 was applicable to certain of the employees decribed, since their wages were set by wage
22 boards or other wage-fixing authorities within the meaning of the section and that it was applicable to employees paid by the month as well as those paid by the hour. He made no direct answer to the question of overtime for monthly employees, but a negative answer can fairly be inferred from the following statement:[1]

"You are advised, therefore, that employees of the classes numbered (1) and (2)[2] in the submission are subject to the provisions of section 23 of the act of March 28, 1934. As to class (2), however, no change in the monthly or annual rate of compensation other than that required to pay a rate not lower than the rate per annum or per month paid June 1, 1932, less any applicable percentage reductions, would be authorized. That is to say, they are to receive the same monthly or annual compensation although their regular hours of duty may be reduced."

The Governor thereafter attempted to save some money in spite of Section 23, by putting certain monthly paid employees on an hourly basis. He then divided the June 1, 1932, monthly salary by 224, the number of hours which, he estimated, they had been working per month, including 8 hours a day for six days a week, 16 hours for occasional overtime, and something more for occasional work on Sundays and holidays. According to this statement, they had been working 52 hours per week. Having thus computed their hourly wages, he then added 20 percent to this hourly wage, so as to pay them the same for the new 40-hour week as they would have received before for a 48-hour week, though they had in fact been working, and had been paid for, many more than 48 hours, according to his computation of their previous hourly earnings. The computation is shown at page 163 of 14 Comp. Gen. The net result was to substantially reduce their monthly earnings. The employees complained, and the question was submitted by the Governor to the Comptroller General along with some related questions and a request for re-

[1] The decision of April 12 is quoted in the body of a later decision, 14 Comp. Gen. at 158.

[2] In the question submitted by the Governor, hourly paid artisan and mechanical employees were classified as (1) and monthly paid employees of the same trades were classified as (2).

In other decisions of the Comptroller General, given in response to inquiries from the Public Printer and the Secretary of the Navy, the Comptroller General was more explicit on the question of overtime for monthly employees, 13 Comp. Gen. 265, 270; Id. 277, 280. These decisions are referred to hereinafter.

consideration of his former decision. The Governor's view as to the applicability of the 40-hour week to monthly employees is shown by his statement which was included in the submission to the Comptroller General:

"(a) The former monthly rates of pay for electricians and other craftsmen in operating positions included compensation for a definite amount of overtime service each month, which no longer can be worked under the new la[illegible]." [14 Comp. Gen. at 163.]

The Comptroller General in reply reaffirmed his decision of April 12, and disapproved the recomputation of monthly wages described above (14 Comp. Gen. 156, 164). In demonstrating the impropriety of subtracting that part of the former monthly salary which, the Governor said, had been included to compensate for overtime, the Comptroller General said, at 164:

"* * * it is fundamental that a rate of compensation fixed by the month or year for full-time service is inclusive of any amount of overtime; that is, the compensation is for every day and every hour of the month or year whether or not service is actually rendered. * * *"

At page 165, the Comptroller General said:

"Referring to question no. 2, the procedure adopted changing the monthly rates to per hour rates, with a resulting deduction in weekly earnings, was not proper. As stated in decision of April 12, the proper procedure was to continue the payment of the same monthly rates of compensation even though there may have been a reduction in the number of hours per week and no overtime compensation is authorized. This is the general rule that has been adopted under the 40-hour week statutory provision for all employees paid on a monthly or annual basis to which the provision is applicable."

It appears from the above and from the rest of the statement of the Comptroller General that he decided that Section 23 applied to monthly employees who were artisans or mechanics, and that therefore their monthly salaries could not be reduced below the June 1, 1932, level, no matter how much their hours were reduced. He was not presented with the question as to whether they could be regularly worked more than 40
24 hours a week, since the Governor had taken the position that they could not, but he had advised the Governor in his April decision that Section 23 was applicable to them, and his discussion of the Governor's attempted recomputation assumes that their workweek was to be 40 hours, as Section 23 specifies. In one or perhaps two places in his discussion he observes that monthly employees should not be paid overtime.

It seems that with regard to the plaintiff, and, presumably, other employees similarly situated, the observation in the Comptroller General's statement that monthly paid employees were not entitled to overtime was the part of the statement which the Governor made the most use of. He worked the plaintiff 48 hours a week and paid him no overtime. He could not have done this because he thought Section 23 was not applicable to the plaintiff. The Comptroller General had squarely held that it was applicable. He could not have done it because he thought the 40-hour-week limitation was not applicable to the plaintiff, though other parts of the section were. He had, in his submission of the question, stated that if the Comptroller General adhered to his decision of April 12, monthly employees could not be worked more than 40 hours a week. The Comptroller General's language assumes that the 40-hour-week provision was applicable and that monthly employees would be worked only 40 hours a week. Thus in disregard of the advice which the Governor had asked and received, Section 23 was effectively flouted, and the Governor's attempted economy, which, when presented under another guise, had been rejected by the Comptroller General, was accomplished by the expedient of disobeying the 40-hour-week limitation of Section 23. The record does not show that the question of the legality of this expedient was ever presented to the Comptroller General.

We think that the Governor's solution of the problem was a legally impossible one. Either Section 23 was applicable or it wasn't. The Comptroller General held that it was. If it was, the plaintiff's workweek should have been 40 hours, as the section said it should be, and as the Comptroller General assumed that it would be. If it still remained "fundamental," in the face of the new statute, that a monthly employee's monthly pay is "for every day and every hour of the month or year whether or not service is actually rendered," as the Comptroller General had said in another connection, so that the plaintiff could not be paid for overtime, then he should not have been worked overtime, at least as a regular practice. The attempted combination of this "fundamental" doctrine with Section 23 made an impossible mixture which could not have been intended by Congress. No ordinary rule of law or precept of a department remains fundamental after Congress has, by a statute, negatived it.

In what we have said so far, we have assumed, as the Comptroller General did, that Section 23 applied to employees of the Panama Canal, and to monthly employees. The Government denies both assumptions.

As to the first, the Government points out that Section 23 is applicable only to the situation of "the several trades and occupations" whose wages are "set by wage boards or other wage-fixing authorities." Our findings 12 to 15 show that the wages of artisans and mechanics such as the plaintiff were set by the Governor of the Canal after recommendations made by a wage board appointed for that purpose by the Governor. We think, as did the Comptroller General, that this prerequisite of the applicability of Section 23 was met. The Governor has so administered the law as to employees paid by the hour, since shortly after its enactment in 1934.

As to the second point, the Government urges vigorously that Section 23 was not intended by Congress to have, and consequently does not have, any application whatever to employees paid by the month, either in the Panama Canal or elsewhere. In its brief and argument it presents items of legislative history and statements of departmental practice, which, it claims, support this view.

The most directly pertinent piece of legislative history is a statement made to the subcommittee of the Committee on Appropriations of the Senate [3] by Mr. Alifas, a representative of unions in the American Federation of Labor, "on behalf of the 75,000 or more per diem mechanics and workmen employed at the Navy yards, arsenals, the Panama Canal Zone, and other divisions of the Federal Service * * *." The bill before the com-
26 mittee was the Independent Offices Appropriation bill which proposed to restore the general 15-percent wage cut for federal employees which had been put into effect the previous year. Mr. Alifas urged that his constituents would not be made whole by a mere restoration of the percentage cut; that the departments employing them had further cut their pay by a system of regular lay-offs without pay which had reduced their workweek to 40 hours and their pay correspondingly. He presented a suggested draft of an amendment to accomplish his purpose, as follows:

"Provided, That the rates of compensation for the several trades and occupations, which are set by wage boards or other wage-fixing authorities, shall be reestablished and maintained at rates not lower than the respective wage schedules in effect on June 1, 1932; and that the Navy Department and other departments and independent establishments of the Government are hereby directed to restore to employees any reduction in pay which they have received since June 30, 1932, in addition to the 15-percent congressional cut, without increasing the present hours of service; and that the respective departments and independent offices are hereby authorized to incur such deficiencies as may be necessary to put this provision into effect."

[3] Seventy-third Congress, Second Session, Hearings on H. R. 6663, pp. 59–61.

The committee did not adopt the suggested amendment.[4] But when the bill came to the floor of the Senate, Senator Thomas of Oklahoma, who was a member of the subcommittee, offered the amendment which became Section 23.[5] Such discussion as occurred on the floor of the Senate and the House throws little light on our problem as to whether the benefits of the section were to extend to monthly paid employees. No one suggested that it was not to do so. Senator Cutting, in debate on the bill, said that the bill was designed to do "in effect what the N. R. A. is trying to do, to pay the same amount of wages for shorter periods of labor."[6] If any one had said, at that point in the debate, that a mechanic paid by the month was not to have his hours of labor reduced, it would have been hard to suggest a reason for such a dis-
27 crimination. If the policy was to reduce hours without reducing pay, that policy would have been just as applicable to monthly paid employees as to those paid by the hour. Not a syllable in the text of Section 23, or a word in the debates in Congress, even suggests the distinction which the Government asks us to draw.

The presentation to us of the statement of Mr. Alifas before the subcommittee persuades us that it is quite likely that the idea of Section 23 was originated by the union leaders of the per diem employees for whom he spoke, and that it may well have been their agitation which caused the section to be inserted in the law. But the benefits of a statute, general in terms, and whose policy is applicable to others, cannot be made the exclusive property of the persons or organizations who agitate for and bring about its passage.

The need of monthly paid employees for the protection of Section 23 soon became apparent. As we have seen, as soon as the Governor of the Canal was advised by the Comptroller General that the 40-hour-week provision of Section 23 was applicable to monthly employees, he cut their hours, and cut their wages below the 1932 level. It was their complaint concerning this wage cut which caused the second submission of the question to the Comptroller General. He held that Section 23 not only required that employees who had had their weekly wages reduced by reducing their hours, should have their weekly wages restored to the 1932 level, but that employees who had not had their weekly wages cut, since they were paid by the month and were worked 52 hours a week, should not have them cut, after the enactment of Section 23, by the reduction of their work week to 40 hours.

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[4] Senate Rep. No. 294, 73d Cong., 2d Sess.
[5] Cong. Rec., Vol. 78, Part 3, p. 2977, 73d Cong., 2d Sess.
[6] Cong. Rec., Vol. 78, Part 5, p. 5574, 73d Cong., 2d Sess.

According to the Government's contention, the Governor was right. Section 23 was inapplicable, and he could have maintained the 52-hour work week at the same pay, or could have cut it with a corresponding reduction in pay. The result, then, of an act of Congress, which on its face was just as applicable to monthly employees as to any other employees, and which said that the weekly wages of employees "shall be reestablished and maintained at rates not lower than" the 1932 rates would have been that monthly employees would have had their wages cut below the 1932 level for the first time, while other employees were having theirs restored to the 1932 level. That Con-
28 gress could have sub silentio entertained any such contradictory intention seems incredible. The Comptroller General ruled that the cut in pay was "in contravention of the plain terms of the statute." Thereupon the Governor abandoned that scheme for balancing his budget, but accomplished the same purpose by taking advantage of the Comptroller General's observation that if he worked monthly employees more than the statutory maximum hours, he still would not have to pay them for the extra work.

It is urged that there had been, before the enactment of Section 23, no reduction in the wages of monthly employees other than the general percentage reduction and that therefore the section, except for the proviso, could not have been intended to have any application to such employees. We do not think that it may be assumed that in all the departments having monthly paid mechanical employees there had been no furloughs without pay or other arrangements to spread the work and at the same time keep the pay roll within the available funds. The Governor of the Panama Canal had, it seems, met the problem by increasing the hours of those monthly employees who were retained on the pay roll. Other administrators may have solved it by spreading the work in some such way as that suggested above. As we have seen, the Governor proposed, after Section 23 was enacted, to put his monthly employees on an hourly basis for a shorter week and thus reduce their pay. If the Government's position that Section 23 was inapplicable to them is correct, he could lawfully have done so. The Comptroller General ruled that he could not, and for that reason only he did not. We think, therefore, that there may well have been occasion for the direct application of the first part of Section 23, as well as the proviso, to monthly employees.

The Government points out that in July 1937, after three years of administration of Section 23 as not requiring overtime pay to be paid to monthly employees, Congress amended Section 81 of

Title 2 of the Canal Zone Code (50 Stat. 486, 487), so that, while it still lodged in the President the power to fix the compensation of employees until Congress should do so, it contained the following new language:

"And provided further that nothing contained in this section shall affect the application to employees of the Panama Canal of the provisions of section 23 * * *" [of the Act of 1934].

29 The Government contends that Congress in 1937 presumably was aware of the whole previous history of legislation and executive orders, "the consistent administrative practice of 23 years, including 3 after the passage of Section 23, the Comptroller General's decision on Section 23, and Section 23 itself."

The administrative practice for the first 20 of the 23 years, i. e., down to the enactment of Section 23 in 1934, would have been of no significance even if Congress had been aware of it. Until 1934 the President had, under the 1912 act, the power to fix compensation and hours of work. He had ordered that monthly employees should not receive overtime, and that settled that question until Congress acted. Administrative interpretation was of course in accord with the President's plain order, and proves nothing about what Congress meant by what it did later. In 1934 Congress, in enacting Section 23, provided for overtime for employees in terms that, on their face, did not exclude monthly employees. In 1937 Congress reaffirmed both the President's general power to fix compensation and conditions of employment, and the rights of employees under Section 23. If, as we think, its intention in 1934 in enacting Section 23 had been to give overtime to monthly employees such as plaintiff, and it had known in 1937, as the Government would have us presume, that that intention had been frustated by administrative interpretation, it might plausibly be argued that its proviso reaffirming Section 23 was intended to negative, rather than to ratify, that administrative interpretation.

The proposed amendment of Section 81 of the Canal Zone Code was first introduced in the Seventy-fourth Congress[7] for the purpose of confirming the President's authority to provide for the commutation of leave.[8] The proviso quoted above preserving the effect of Section 23 was attached when the amendment was reintroduced in the Seventy-fifth Congress.[9] The Government quotes letters to the Congressional Committees from the

30 Governor of the Canal and the Secretary of War saying

[7] H. R. 6719, 74th Cong., 1st Sess.
[8] S. Rept. No. 1821, 74th Cong., 2d Sess., p. 2, which incorporates H. Rept. No. 744, 74th Cong., 1st Sess., on the purposes and effects of the proposed amendments of the Canal Zone Code.
[9] H. R. 6144, 75th Cong., 1st Sess.

that Section 23 was "general legislation of the United States which is not applicable to American employees of the Canal generally and affects only a certain number of employees in particular groups by reason of a ruling to that effect by the Comptroller General." These statements as to the limited effect of Section 23 were obviously true, without regard to the problem here in question. None of the employees in the classified service were intended to be covered by it. The ruling of the Comptroller General was not cited, nor its purport stated. The letters therefore contained nothing which would have suggested to Congress that the Governor, having been advised by the Comptroller General that Section 23 was partly applicable and partly nonapplicable to monthly paid employees such as the plaintiff, was, in his administration, ignoring the section completely. If Congressmen had searched out and read the decisions of the Comptroller General they still would have found no intimation that the Governor had, in disregard of those decisions, been continuing to work monthly employees a regular workweek of 48 hours in the face of a statute limiting the workweek to 40 hours. The Government points out that the amendment to Section 81 saving the effect of Section 23 was drafted by the Governor of the Canal. He knew how he had been administering Section 23, but how any Congressman could have guessed it, we cannot see. In these circumstances, the 1937 act seems to us to throw no light upon our problem, and we treat its proviso as being merely a reaffirmation of Section 23 of the 1934 act, with that section's original meaning.

The Government urges that, in addition to the administrative practice of the Governor of the Canal, which was, as we have seen, to disregard the provisions of the law relating to the 40-hour week and overtime pay, the War and Navy Department similiarly administered the statute, and that this consistent administration gives it the meaning urged by the Government. The evidence of this departmental administration consists of letters from the War and Navy Departments to counsel for the Panama Canal, dated in November 1943. The War Department letter says that per annum and monthly employees have not been paid overtime under Section 23. The Navy Department letter says that per annum employees have not been so paid. Neither letter says that such employees have in fact been worked overtime, either regularly, as the plaintiff was, or at all.

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Some further light on what the probable administrative practice of the Navy Department has been, is had from reading the questions submitted by the Secretary of the Navy to the Comptroller General on April 6, 1934, a few days after the enactment of Section 23, and that official's answer.[10] The Secretary's sixth

[10] 13 Comp. Gen. 277.

question was whether per-annum or per-month employees who worked in excess of 40 hours a week "because of an extraordinary emergency" would be entitled to overtime pay under Section 23. The Comptroller General said they would not, and referred the Secretary to his decision of a few days earlier relating to employees of the Government Printing Office. In that decision [11] he had said, at page 269:

"* * * the regular hours of work of per annum employees within the terms of Section 23 of the act of March 28, 1934, are required to be fixed at not to exceed 40 per week * * *"

In answer to question six of the Public Printer, as to whether per-annum employees were entitled to overtime compensation, the Comptroller General said, 13 Comp. Gen., at page 276:

"Question 6 is answered in the negative. The term "overtime" has never been applicable to employees paid on an annual basis and there is no purpose or intent shown by section 23 of the act of March 28, 1934, to extend the right to overtime compensation to employees paid on an annual basis who may be required to work more than their regular tour of duty of 40 hours per week."

It appears then that the Secretary of the Navy never even raised the question as to whether he could work per-annum and per-month employees more than 40 hours a week without extra compensation except in the case of "an extraordinary emergency." In answer he was told that the regular hours of work of such employees were, by Section 23, "required to be fixed at not
32 to exceed 40 per week," but that overtime need not be paid for overtime work "because of an extraordinary emergency." Whether or how often extraordinary emergencies arose before the overtime statutes were, in the war emergency period, more explicitly made applicable to monthly employees, we do not know. We have no reason to suppose that the Secretary of the Navy or the Secretary of War, like the Governor of the Panama Canal, disregarded the 40-hour-week limitation and habitually worked monthly employees overtime without compensation.

So far as the administration of Section 23 has been disclosed to us, it would seem to have been that monthly paid mechanical employees in the Navy and War Departments, the Government Printing Office, and in any other agency of the Government which had such employees, except the Panama Canal, had their hours of work reduced to 40 without any cut in their pay. The Comptroller General had ruled that that was their right, and we have no evidence whatever that that ruling was not followed. The Government contends that the administrative practice was that Section 23 was not applicable to monthly employees. We think

[11] Comp. Gen. 265.

that all the evidence there is, and the fair inferences that may be drawn from it, show exactly the opposite. There is not even any evidence that the Governor of the Panama Canal ever again entertained the thought, after the Comptroller General's rulings in 1934, that Section 23 was not applicable to monthly employees. All that appears is that he regarded as providential, and took full advantage of, the Comptroller General's subordinate ruling that, even though he did not obey the law, he would not have to pay overtime.

In view of what we have supposed to have been the practices of the other departments, the plaintiff and other Canal employees similarly situated were the victims of gross discrimination. Monthly employees in other departments kept their former pay, plus the restoration of the fifteen percent cut, though they worked only 40 hours. The plaintiff had to work 48 hours to keep his former pay, plus the restoration. There is nothing in the doctrine that administration may give meaning to a statute which permits one administrator, of several who have applied the law, to give it a meaning essentially different from that given by all the
33 others, and thus in effect make a special and peculiar law applicable only to those persons who have the misfortune to come within the area of his administration. Section 23 gave the same rights to employees of the Canal as it gave to employees in the other departments.

To justify the Governor one would have to rely on the ruling of the Comptroller General to the effect that though Section 23 was applicable and limited the work week to 40 hours, yet a longer work week required no additional compensation. In fairness to the Comptrolier General, it should be repeated that, so far as appears, the Governor's interpretation of his ruling as permitting habitual violation of the law with impunity, was never presented to him for comment. That ruling, at least as thus interpreted, is without justification in the text of the statute, without logic, and productive of the sort of administrative confusion and discrimination which here confronts us.

What the intended beneficiaries of the statute, the employees, would get under such a doctrine, would, as it has done in this case, range all the way from nothing, in the Panama Canal employment, to much, in the Navy and other departments, where they seem to have had a 40-hour week unless it was extended because of an extraordinary emergency.

The Government cites numerous instances of legislation since the beginning of the war emergency relating to compensation for overtime in Government employment, concerning which, it says, the reports and debates show that those Congressmen who had charge of the legislation thought that monthly and annual em-

ployees had not previously been entitled to overtime compensation. We suppose that that was the impression of informed persons. It should have been, since in fact such employees were not getting overtime compensation, because the Comptroller General's rulings had denied it to them. For Congress to have excluded such employees from the new legislation, and to have relegated them to lawsuits to reverse the Comptroller General's rulings concerning the old legislation, would have meant that these employees would probably have left the Government's employment, outside em-
ployment at high wages being easy to obtain. It is dan-
34 gerous doctrine to attribute to legislation which explicitly resolves, for the future, a doubtful question, an intention on the part of the legislature to adopt, and make retroactive, a previous administrative interpretation of the doubtful language. A legislature should feel free to make clear law for the future without danger that it may, thereby, destroy rights which have properly accrued or create rights which have not properly accrued under the unclear, or misinterpreted, language of the former statute. We are not persuaded, therefore, that Congress, by the recent actions to which we are referred, intended to ratify and make retroactive the Comptroller General's intrepretation of Section 23 as to overtime for monthly employees.

The Government urges that, even if the plaintiff is entitled to recover overtime, his proposed computation of the amount due him is excessive. The plaintiff's method of computation was as follows: he multiplied his monthly salary by 12 and divided that product by 52 to determine his weekly salary. He divided that weekly salary by 5 to ascertain his daily pay for an 8-hour day, which was what he worked in a 40-hour week, which was what Section 23 called for. Taking this daily wage, he added one-half to it, since Section 23 called for time and a half for overtime, and multiplied that sum by the number of times he had worked a sixth day in a week. By that computation, the plaintiff claims, he will be correctly paid time and one-half for his overtime, or sixth day, work.

The Government contends, on the other hand, that the plaintiff's monthly pay was for every day in the month, since all of his time was hired; that his daily pay should be found to be one-thirtieth of his monthly pay, and that therefore he has in fact been paid straight time, not only for the 5 days or 40 hours that he should have worked under Section 23, but also for the sixth day that he was required to work and for which he claims overtime. On that basis, the Government urges that the plaintiff is entitled only to the additional half pay for the sixth day of each week. But if we adopt this method of computation, it seems

that the plaintiff has already been overpaid, for he has also been paid straight time for the seventh day of each week, when he only worked 6 days, and therefore has received more time and one-half for the sixth day.

35 The Government suggests, in the alternative, that the plaintiff's monthly pay should be divided by 26, the number of days on which he was actually required to work; that again he has been paid for all the days, 26, that he did work, and is therefore entitled only to an additional half pay for the days which he worked as sixth days in a week, he already having received his regular pay for those sixth days.

We think the Government's contentions are not valid. When the plaintiff was employed at a monthly salary and was assigned to work 8 hours a day while Section 23 which limited his work-week to 40 hours was in force, we think that he was, in legal effect, hired for a 5-day week, and that his daily wage, since it has become necessary to determine it, must be determined on that basis. It follows that he has not been paid at all for the sixth day of each week, and that he may recover straight time, and one-half time in addition, for the sixth day. We think the plaintiff's method of computation accomplishes that result.

We are aware that the act of October 21, 1940,[12] provided:

"* * * in determining the overtime compensation of the foregoing per annum Government employees the pay for one day shall be considered to be one three-hundred-and-sixtieth of their respective per annum salaries."

The House Committee on Naval Affairs said, in its report[13] on the bill which became the act of June 28, 1940, the first of the emergency overtime Acts:

"Overtime pay has heretofore not been allowed to any per annum employees of the Government, although overtime pay at time and one-half is allowed to per diem employees. * * *

"In order to calculate the amount of overtime pay for per annum employees it is necessary to specify in the act the corresponding daily pay. This has been done in accordance with long-standing Government custom by fixing it at one three-hundred-and-sixtieth of the annual salary on the customary basis of 12 months to a year and 30 days to a month."

The statements in the two paragraphs of this report seem inconsistent, in that if no overtime had previously been

36 paid to per annum employees, it is not clear how there

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[12] 54 Stat. 1205, terminated June 30, 1942.
[13] H. Rept. No. 2257, 76th Cong., 3d Sess., pp. 3–4.

could have been a "long standing Government custom" as to the method of computing it. The custom must have related to computation of daily pay for some other purpose of which we are not advised. We think therefore, that the specific statutory method of computing overtime, enacted for the first time in 1940, should not control the computation in this case.

The Government urges that, if Section 23 is made applicable to the plaintiff's employment, it brings that section into conflict with Section 4 of the Panama Canal Act of August 24, 1912, 37 Stat. 560, 569.[14] That section provides that wages of Canal employees shall not exceed by more than 25 percent the wages paid for the same or similar services to persons employed by the Government in the continental United States. The Government says that the only Government employment in the United States to which the plaintiff's employment was comparable was that in the Engineer Corps, U. S. Army, and that Section 23 was not applicable to that employment.[15] We do not know what the pay of Engineer Corps' employees was during the period here involved, nor how many hours they worked per week. In any event, we do not suppose that Congress intended, in enacting Section 23, to wholly deny its benefits to particular employees, or particular groups of employees, because the effect of its application would be to increase their wages, by some amount beyond the 25 percent differential. The two sections should have been reconciled, if necessary, by a reduction of the plaintiff's wages, and not by an administrative nullification of Section 23. It is not necessary for us to decide, and we do not decide, which of the sections would govern if a real conflict between them were presented.

The plaintiff is entitled to recover $5,157.57. It is so ordered.

Littleton, Judge; and Whaley, Chief Justice, concur.

Dissenting opinion

WHITAKER, Judge, dissenting:

The Economy Act of March 20, 1933, reduced the wages of all Government employees 15 percent. By the Act of March 28, 1934, 5 percent of the pay cut was restored for the
37 remainder of the current fiscal year, and another 5 percent for the following fiscal year. It was called to the attention

[14] The act of June 19, 1934, 48 Stat. 1122, enacted the Canal Zone Code, containing the same provisions.
[15] 13 Comp. Gen. 486; 14 Comp. Gen. 156, 162.

of Congress, however, that the wages of the per diem employees had been reduced more than 15 percent by the device of laying them off one day every two weeks. To take care of this Congress enacted section 23, providing:

"The weekly compensation, minus any general percentage reduction which may be prescribed by Act of Congress, * * * shall be reestablished and maintained at rates not lower than necessary to restore the full weekly earnings of such employees in accordance with the full-time weekly earnings under the respective wage schedules in effect on June 1, 1932 * * *."

Evidently this section had no application to an employee paid on a monthly or annual basis because there had been no reduction in the wages of such employee except the general 15-percent reduction, and, therefore, so far as such employee was concerned, the provision accomplished nothing. But it did operate to restore the former wages of the per diem employee "minus any general percentage reduction which may be prescribed by Act of Congress." The "weekly compensation" of these employees had been reduced by the one-day lay-off every two weeks. This section restored that cut. It had no other effect.

This was the main purpose of the section; the proviso was inserted to prevent the section's being availed of to increase the hours of labor of these per diem employees.

I do not think any part of the section was intended to have any effect on employees paid on a monthly or annual basis.

The section was adopted as the result of the agitation of Mr. Alifas, who was pleading the cause of per diem workers. The language used by Congress must be construed, it seems to me, in the light of the situation it was trying to remedy. It ought not to be held to include other employees since the provision of the Act to restore wages had no effect whatever on the salaries of employees on a monthly or annual basis.

It seems to me, too, that Congress must have known that employees of the Canal Zone paid on a monthly or annual basis were not given any additional compensation for overtime work.
38 The President's Executive Order plainly stated this. It is also true that the Army and Navy Departments did not pay extra compensation for overtime work of such employees, and this had been the rule in those departments for many years. The fact that the Secretary said that in cases of extraordinary emergency they were not paid extra compensation when required to work overtime does not seem to make any difference. Whether overtime work was only in an extraordinary emergency or was habitual does not seem to me to affect the employee's right to extra com-

pensation, if he in fact worked overtime, for whatever cause. Clearly, such employees in the Panama Canal Zone and such employees in the Army and Navy did not receive extra compensation when they did work overtime, and since this has been the practice over many years Congress presumably knew it. If so, and if Congress desired that they should have extra compensation for overtime labor, it seems to me that it would have used language to explicitly include them.

I do not think section 23 has any application to plaintiff and, therefore, he is not entitled to recover.

It is true that the construction of section 23 by the Comptroller General and its administration by the Governor of the Panama Canal Zone did produce confusion, as the majority opinion says, but no confusion results if it is held that section 23 has no application to such employees at all, and this I think is the correct view to take.

JONES, Judge, took no part in the decision of this case.

39 *Judgment of the court*

March 6, 1944

Upon the special findings of fact, which are made a part of the judgment herein, the court concludes, as a matter of law, that plaintiff is entitled to recover $5,157.57.

It is therefore adjudged and ordered that plaintiff recover of and from the United States the sum of five thousand one hundred fifty-seven dollars and fifty-seven cents ($5,157.57).

Proceedings after judgment

On April 20, 1944, the defendant filed a motion for leave to file a further motion for new trial, and said motion was overruled April 20, 1944.

On April 20, 1944, the defendant filed a motion for an extension of time to April 30, 1944, within which to designate the record to be certified for its petition for Writ of Certiorari.

On April 22, 1944, said motion was overruled.

On May 18, 1944, the defendant filed a request for record in re certiorari.

41 [Clerk's certificate to foregoing transcript omitted in printing.]

42 In the Court of Claims of the United States

No. 45097

LOUIS TOWNSLEY, PLAINTIFF

v.

THE UNITED STATES, DEFENDANT

Stipulation of Facts

Filed Nov. 3, 1942

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto that the facts hereinbelow set forth, incorporated herein by attachment and incorporated herein by reference shall, for the purposes of this case, be deemed to have been proved by competent evidence and shall constitute and be treated as part of the record in this case, subject to the following reservation, to wit, that either party may object to any of the facts hereby stipulated and agreed to on the grounds of irrelevancy or immateriality or both.

The facts hereby stipulated and agreed to are as follows:

I. On February 2, 1914, the President of the United States promulgated Executive Order No. 1888 fixing the general conditions of employment governing employees of the Panama Canal on the Isthmus. A true copy of said Executive Order is attached hereto as "Exhibit A." On January 15, 1917, the President of the United States promulgated Executive Order No. 2514 amending Executive Order No. 1888 of February 2, 1914. A true copy of Executive Order No. 2514 of January 15, 1917 is attached hereto as "Exhibit B."

II. Copies of certain official records and documents of the Panama Canal, certified as true and correct by the Executive Secretary thereof, are attached hereto as "Exhibit C." Said exhibit consists of thirty-seven (37) sheets, numbered con-

43 secutively in the lower right-hand corner of each sheet. The first sheet is the certificate of the Executive Secretary of The Panama Canal. Twelve (12) separate documents, consisting of one or more sheets, make up the remaining thirty-six (36) sheets, namely

(1) The original letter from the Governor of the Panama Canal to the first members of the Wage Board establishing the Board, appointing the individuals to whom the letter was directed to the Board and indicating the general functions and procedures of the Wage Board, dated March 11, 1919. (Sheets 2 and 3.)

(2) Page from the Panama Canal Record of April 9, 1919, containing the Governor's circular indicating that the above-referred to letter had been written and adding certain procedural requirements. (Sheets 4 and 5.)

(3) Original letter from the Governor restating the composition, functions, and procedures of the Wage Board, May 21, 1927. (Sheets 6 and 7.)

(4) Memorandum from the Governor to the Wage Board indicating their jurisdiction for making recommendations for the wages of certain positions. (Sheet 8.)

(5) Excerpts from Personnel Regulations, The Panama Canal, regarding the functions and procedure of the Wage Board promulgated by the Governor March 1, 1928. (Sheets 9 and 10.)

(6) Minutes of 287th meeting of Wage Board, March 12, 1929. (Sheets 11–15.)

(7) Minutes of 332d meeting of Wage Board, June 21, 1933. (Sheets 16–21.)

(8) Memorandum from the Governor to the Wage Board dated November 29, 1929. (Sheet 22.)

(9) Memorandum from the Executive Secretary to the Personnel Bureau dated December 2, 1929. (Sheets 23–25.)

(10) Memorandum from Major R. A. Wheeler, member, Wage Board to the Governor recommending rates of pay for Dredging Division employees, dated March 25, 1930, known as the "Wheeler Schedule." (Sheets 26–33.)

(11) Memorandum from the Governor dated October 29, 1930, indicating that the "Wheeler Schedule" would govern the adjustment of pay in floating craft of the Marine and Dredging Divisions. (Sheet 34.)

(12) Memorandum from Executive Secretary to the Superintendent of the Dredging Division and the Marine Superintendent, dated October 31, 1930, publishing wage schedules for Dredging Division based on Governor's memorandum of October 29, 1930. (Sheets 35–37.)

44 The first five documents relate to the origin, development, and functions of the Wage Board referred to by plaintiff in his testimony in this case. The remaining seven documents relate to the establishment of the wage rates for the positions held by plaintiff.

III. From March 28, 1934, to January 6, 1937, plaintiff was employed by The Panama Canal as Operator (pipe line suction dredge) at the rate of $306 a month. From January 7, 1937, to November 30, 1937, he was employed as Chief Operator (pipe line suction dredge) at the rate of $311 a month. From December 1, 1937, to August 31, 1939, at which time he retired, plaintiff was

employed as Master (pipe line suction dredge) at the rate of $336 a month.

IV. Plaintiff worked on the Panama Canal pipe line suction dredge *Las Cruces*. It is a diesel-electric hydraulic dredge with a 24-inch diameter discharge and a displacement of 2,500 tons. The hull is 226 feet long, 50 feet wide, and 14 feet deep. There are two spuds, each weighing 110,000 pounds, and an agitating ladder 90 feet long. The main power plant consists of four 911-H. P. diesel engines, each connected to a 550-K. W., 270-volt main generator and a 220-K. W., 120-volt auxiliary generator. In addition to the dredging pump, which is driven by a 2,500-H. P. electric motor at 1,000 volts (maximum) power is supplied for one 300-H. P. cutter motor, one 100-H. P. swinging and ladder hoist motor, one 100-H. P. spud motor, one 75-H. P. fire pump motor, and 28 miscellaneous motors on various auxiliary equipment, ranging from 1 H. P. to 50 H. P. The main switchboard is a 12-panel dead front. There is one Auxiliary switch panel for changing from three or four engines to two-engine operation and also one auxiliary switch panel for changing the auxiliary generators from self-excitation to separate excitation. There are also panels for 24 power circuits and 40 lighting circuits.

During the period in question (March 28, 1934, to August 31, 1939) this dredge operated on a schedule of 24 hours each day, except Sunday, on three eight-hour shifts and was engaged most of the time in maintaining Canal channels and terminal
45 harbors. Channels vary from 300 feet to 500 feet in width and work is carried on in the face of shipping. A considerable amount of original excavation is also handled in connection with channel and harbor improvement work and occasional work is done in the production of river sand and gravel for construction purposes and in excavation of coral and sand or other materials from borrow pits for use in developing air fields or for making hydraulic fills for other uses. The output of the dredge varies from about 500 to 2,000 cubic yards of material per hour, pending upon the class of material and the location of the dump. The length of the pipe line in use varies from about 2,000 feet to 10,000 feet and consists of both floating and shore sections. Usually spoil must be deposited with especial regard to maintaining satisfactory sanitary conditions, particularly with respect to mosquito control. Operation is necessary in both fresh and salt water. During the period in question (March 28, 1934, to August 31, 1939) there have been Sundays when the dredge has worked, especially on important work which if stopped would have lost the progress made and therefore had to be carried to completion. During this period certain repairs or replacements were made on

Sundays to cut down lost dredging time during the week. This work consisted of changing main pump casings or runners, relining the pump, changing ladder wire, rearranging shorelines, etc. The Master scheduled these repairs and brought out sufficient men to perform the work, and the Master usually was present to supervise the work which was normally completed on the day watch on Sunday.

The Master of the dredge is in charge of all operations of the dredge including disposition of spoil and supervision of fills, construction of temporary spillways, and other control works directly connected with the operation of this equipment. He is required to have a license as Master, Pipe Line Suction Dredge, issued by the Board of Local Inspectors of the Panama Canal. The Master operates the dredge when required to do so and he is aboard or in the vicinity of the work being done eight hours per day. He is available for emergency calls at all hours. During his
46 employment as Master, Dredge *Las Cruces*, from December 1, 1937, to August 31, 1939, plaintiff's normal duties required his presence either on the dredge or on related work away from the dredge, 8 hours per day and 6 days per week. This was a supervisory position but he was nevertheless required to work certain regular hours, usually from 7 A. M. to 3 P. M. He was subject to call for duty at any hour of the day or night in case of a major break-down of the equipment or any other unusual circumstance. Any Sunday or holiday service required in an emergency was covered by the regulations concerning compensatory time off, as set forth in Section 48.3 of "Exhibit D" attached hereto. Any unusual service performed after regular working hours could have been compensated for by the taking of the following day off for rest and recuperation, although Masters do not usually take advantage of this if they can avoid it, that is, if they feel able to report for duty at the expected hour the following day. If the Master of the *Las Cruces* finds it feasible to leave his job for personal reasons for part of a day, there is usually no objection.

The Chief Operator stands a regular 8-hour watch as Operator (leverman) and is Acting Master during the absence of the Master, which absences average two months per year. The Chief Operator is also in responsible charge of the equipment at all times when the Master is not aboard. He is required to hold a license as Master, Pipe Line Suction Dredge. During his employment as Chief Operator, Dredge *Las Cruces*, from January 7, 1937, to November 30, 1937, plaintiff was required to stand a regular 8-hour watch as Operator on the basis of a 48-hour week. Any Sunday or holiday service required in an emergency was covered by the regulations concerning compensatory time off, as set forth in Section 48.3 of "Exhibit D" attached hereto. Plaintiff usually

worked day shifts only and was the employee usually used to relieve the Operators during their time off. This may have resulted in his having had to work on some of the night shifts. As Chief Operator, he was also the representative of the Master
47 during the latter's absence from the dredge, which occurred quite frequently in the case of a hydraulic dredge as the Master's duties required frequent visits to spoil dumps in current use as well as to sites of prospective work, in addition to absences in connection with a multiplicity of duties away from his dredge, such as inspecting pipe line material and other parts being manufactured, visits to division headquarters to discuss work, etc. During this period plaintiff also served as Acting Master when the Master was on leave.

An Operator of the pipe line suction dredge stands a regular 8-hour watch as Operator (leverman) and is in responsible charge of the equipment at all times when the Master and Chief Operator are not aboard. He is required to hold a license as Master, Pipe Line Suction Dredge. The Operator is in charge of the dredge on his watch and gives orders to the pipe line foremen and to the mate who is in charge of the sailors (deck hands). During his employment as Operator, Dredge *Las Cruces*, from March 28, 1934, to January 6, 1937, plaintiff was required to stand a regular 8-hour watch as Operator on the basis of a 48-hour week. Any Sunday or holiday service required in an emergency was covered by the regulations concerning compensatory time off, as set forth in Section 48.3 of "Exhibit D" attached hereto. During this period he served as Chief Operator as required in the absence of the regular Chief Operator.

V. Compensatory time off is granted in accordance with the regulations issued by the Governor of The Panama Canal. As a rule definite schedules for relief are prepared in advance. Overtime required is arranged orally by the Master, to suit the exigencies of the work. The Master usually fixes his own overtime requirements. However, in some instances he may be specifically instructed by his Supervisor to handle some work at such a time that overtime on his part will be required. He may also receive notice of emergencies requiring special duty outside of regular working hours, from his subordinates, or through his Supervisor. Certified copies of Personnel Regulations, The Panama Canal, Sections 43.1, 43.5, 48.2, 48.3, 48.4, 48.5, and 48.6, indicating overtime regulations and methods of granting compensatory leave, promulgated March 1, 1928, and in effect during the period covered by plaintiff's claim, are attached hereto as "Exhibit D."

48 VI. The records of the Panama Canal do not disclose that plaintiff or any other pipe line suction dredge operator

made any formal demand to be placed on a 40-hour week schedule or to be paid overtime for time worked in excess of 40 hours per week after March 28, 1934. Immediately before his retirement, however, plaintiff sent the following letter to the Executive Secretary under date of August 29, 1939:

"As it is my belief that all Dredgemen should have been given the 40-hour week I propose to submit a claim to the Court of Claims.

"I request a statement to be used in presenting my claim, showing time worked by me in excess of 40 hours per week since the effective date of the Thomas Amendment.

"Would also like to have certified copies of wage board meetings and Governor's approval of wage board recommendations whereby my wages were established.

"I would be glad to confer with you and agree as to the presentation of my claim."

Since plaintiff was employed and compensated on a monthly basis, the official records of the Canal do not show the hours actually worked by him and it was impossible to supply the requested statement. As set forth in Section II above, copies of the proceedings by which plaintiff's wage rates were fixed are included in "Exhibit C" attached hereto.

VII. On April 4, 1934, the Chief of the Washington Office of The Panama Canal wrote to the Comptroller General of the United States as follows:

"The Governor of The Panama Canal has requested by radio decision as to the application of Section 23 of the Independent Offices Appropriation Act for the fiscal year ending June 30, 1935 (Public, No. 141), which was passed on March 28, 1934. That section reads as follows:

"'SECTION 23. The weekly compensation, minus any general percentage reduction which may be prescribed by Act of Congress, for the several trades and occupations, which is set by wage boards or other wage fixing authorities shall be reestablished and maintained at rates not lower than necessary to restore the full weekly earnings of such employees in accordance with the full-time weekly earnings under the respective wage schedules in effect on June 1, 1932: Provided, That the regular hours of labor shall not be more than forty per week; and all overtime shall be
49 compensated for at the rate of not less than time and one-half.'

"The Governor's radiogram of April 3, 1934, in which explanation is made of the situation, and the questions to which answers are desired are propounded, reads as follows:

"'Interpretation is desired regarding application of Act to Canal employees. Twenty-five hundred American employees in Canal service now working following hours per week:

Administrative and clerical workers	42
Shop and building trade craftsmen	48
Operators, locks, power plants, pumping plants	48 or more
Pilots and employees on floating equipment	48 or more
Physicians, nurses, policemen, and firemen	50 or more

"'For employees not under classification, compensation of these employees is fixed by the Governor with assistance of wage boards. Ascertain if Section 23 of Independent Offices Act requires payment of overtime after 40 hours' service per week for

"(1) Employees in artisan and mechanical groups compensated at hourly rate of pay;

"(2) Similar employees compensated at monthly and annual rates of pay;

"(3) Employees on floating equipment, policemen, firemen, etc.;

"(4) Physicians, nurses, clerical and allied workers under classification * * *'"

On April 12, 1934, the Comptroller General rendered his decision on the above matters, A-54726, 14 C. G. 158. On August 25, 1934, the Comptroller General rendered a second decision in response to a request by the Governor of The Panama Canal for reconsideration of the decision of April 12, 1934, and for answers to certain questions submitted (14 C. G. 159-165). The aforesaid decisions of the Comptroller General are incorporated herein by reference.

Dated October 31, 1942.

KING & KING,
Attorneys for Plaintiff.

FRANCIS M. SHEA,
Assistant Attorney General of the United States.

50 *Exhibit A to stipulation*

EXECUTIVE ORDER

PROVIDING CONDITIONS OF EMPLOYMENT FOR THE PERMANENT FORCE FOR THE PANAMA CANAL

By virtue of the authority vested in me by law, it is hereby ordered that the general conditions of employment governing employees on the Isthmus of Panama, necessary for the completion, care, management, maintenance, sanitation, government, and operation of the Panama Canal, the Canal Zone, the Panama Railroad, and other adjuncts, shall be as follows:

Appointment and Compensation

1. The salaries or compensation of employees shall in no instance exceed by more than twenty-five per centum the salaries or compensation paid for the same or similar services to persons employed by the Government in Continental United States, as determined by the Governor of the Panama Canal.

2. Service must be satisfactory to the head of the department in which employed, and employees are subject to the regulations of the Governor.

3. The compensation and conditions of employment of persons employed in the United States will be specified in provisional appointments. The compensation of such persons will begin upon date of embarkation at port of departure from the United States, and they will be granted free transportation from port of departure, including meals on the steamer, but no compensation or expenses for the journey to the port; but former employees from the United States whose next preceding service with the Panama Canal was less than one year shall be paid only from date of entry into service on the Isthmus, and will be allowed only such reduced rates of transportation to the Isthmus as may be available for Government employees. Employees appointed at an hourly rate will be paid for the period of transit to the Isthmus on the basis of an eight-hour day exclusive of Sundays. Except in case of discharge or other separation from the service beyond the employee's control, payment of salary from date of embarkation to date of arrival on the Isthmus will not be made unless service on the Isthmus continues for thirty days.

4. All officers and employees in the service of the Panama Canal except those who are to perform the duties of clerk, bookkeeper, stenographer, typewriter, surgeon, physician, trained nurse, or draftsman, shall be exempt from examination under Civil Service rules, and appointments to clerical positions on the Isthmus of Panama paying $75.00 per month or less may also be made without examination. Officers and employees now in the service of the Panama Railroad Company on the Isthmus may be transferred to and retained in the service of the Panama Canal without examination, whenever any work now performed independently by the Panama Railroad is consolidated with similar work performed by the Panama Canal.

5. When employees in the present organization are transferred to the permanent organization, they shall retain their seniority as regards questions of Civil Service, quarters, and other privileges or considerations; provided, however, that the seniority granted to employees by this order shall not be operative in any

case so as to form any claim involving the payment of funds o the United States.

6. All employees who receive over $75.00 per month or over 40¢ per hour must be citizens of the United States or the Republic of Panama, and such citizens will be given preference for employment in all grades. Aliens may not be employed in such grades unless

(a) they have occupied similar positions during the construction of the Canal for two years of more, or

(b) in case of emergency, in which latter case they must be replaced by citizens of the United States or Republic of Panama as early as practicable.

51 7. The Governor shall prescribe regulations, when not otherwise fixed in this order, setting forth the qualifications necessary for appointment of the various classes of employees, including physical fitness for work on the Isthmus. The age limit shall in all cases be under 45 years, but the Governor may waive this limit when in his judgment such action is for the good of the service.

8. All appointments shall be made by the Governor of the Panama Canal or by his authority, except the district judge, district attorney, marshal, clerk of district court, and his assistant.

9. Assignment to duty is vested in the respective heads of the departments, and employees will be expected to perform such duties as may properly be assigned to them. The Governor may discharge an employee at any time for cause, and terminate a provisional appointment when the exigencies of the service so require.

10. The Government reserves the right to pay in any money the value or parity of which is guaranteed by the United States.

11. Employees whose salaries are fixed on a monthly or annual basis will receive no pay for overtime work.

12. Employees above the grade of laborer, appointed with rates of pay per hour or per day, will not be employed over eight hours in any one calendar day, except in case of emergency. The time such employees work over eight hours in one calendar day, and time worked on Sundays and regularly authorized holidays, including January 1st, February 22nd, May 30th, July 4th, Labor Day, Thanksgiving Day, and December 25th, shall be considered overtime for which time and one-half will be allowed. Such employees who work on the days prior and subsequent to the holidays specifically named above will be allowed their regular pay for eight hours for such days, in addition to pay for any work performed.

13. An employee whose compensation while on duty carries with it subsistence will not be entitled to same or commutation

thereof while on leave of absence, and no commutation of quarters shall be paid.

Transportation

14. Employees and dependent members of their families will be granted the regular Government rate upon commercial steamship lines with which arrangements for such rates can be made. While the United States operates a steamship line, either directly or through the Panama Railroad Company, employees and the dependent members of their families will be granted transportation at the same rates and under the same conditions as are at present in effect. The rates and conditions are subject to change at any time in the discretion of the Governor.

15. After three years' service, employees who are citizens of the United States will be entitled to free transportation for themselves only, on termination of service, to any port of the United States, except that when such transportation costs the Government more than $40.00 the employee must pay the excess.

16. Employees on the gold roll will be granted one complimentary round-trip pass on the Panama Railroad each calendar month. Mileage books for use of such employees and dependent members of their families or relatives temporarily residing with them, will be furnished at one-half regular tariff rates.

Quarters

17. Where practicable, such bachelor quarters on the Isthmus as may be available from time to tome will be assigned all employees desiring them. Family quarters, when available, will be assigned under such rules as may be prescribed by the Governor. A charge will be made for rent, fuel, and electric current at such time and in accordance with such regulations as the President may hereafter establish.

52 Medical Care

18. Employees injured will be compensated in accordance with such regulations as are prescribed by law.

19. All employees in cases of illness or injury will receive free medical care and attendance in the hospitals, except in cases of alcoholism or venereal disease. If medical attendance is furnished in quarters, a charge may be made under regulations to be prescribed by the Governor. Employees will be charged for medical care and attendance furnished members of their families at the hospitals and at their quarters at such rates and under such regulations as may be prescribed by the Governor.

Leave Regulations

20. All employees who are citizens of the United States, and aliens whose compensation is more than $75.00 per month or 40¢ per hour, shall be entitled to leave privileges.

21. Leave will be divided into three classes, viz: (1) annual leave, (2) cumulative leave, and (3) travel leave.

Annual Leave

22. Twenty-four days annual leave will be allowed each employee for each year after entry into service and, if not granted prior to the close of the year, is forfeited and may not be accumulated, except that any annual leave remaining to an employee's credit in a year in which he is granted cumulative leave may be added to the cumalative leave if taken within two months after the close of his service year.

23. The service year shall date from the day on which an employee's pay in the permanent organization begins.

24. Absences of one-half day or more, when regularly authorized, will be charged against annual leave; also absences on account of illness or injury, upon the certificate of an authorized physician in the service of the Panama Canal, except that in the following classes of cases no payment shall be made for time lost, but the time shall be charged against the annual leave:

(a) Illness due to the fault of the employee, as venereal disease and alcoholism.

(b) Injury due to the employee's wilful intention to bring about the injury or death of himself or another.

(c) Elective surgical operations to relieve conditions existing prior to service on the Isthmus.

25. In the case of hourly or per diem employees annual leave on account of sickness or injury shall be based upon a day of eight hours.

26. Not more than fourteen days annual leave may be taken during the first six months of a service year. In case of illness or injury in the first six months, to cover which no annual leave remains to the employee's credit, the time lost will be charged against the annual leave remaining for the year, and payment will be made after completing ten months of the service year. After the entire twenty-four days annual leave has been used, additional leave in that service year on account of illness or injury will be deducted from the cumulative leave for that year

and when the cumulative leave becomes due the employee will be paid.

27. After exhausting both annual and cumulative leave for the year, additional absence on account of illness or injury will be without pay, except such compensation as may be prescribed by law for employees receiving personal injuries.

53

Cumulative Leave

28. Thirty days cumulative leave will be allowed each employee paid on a monthly or annual basis for each year of his service, and twenty days to each employee paid on an hourly basis. This leave will be due after completing ten months' service each year and may be taken when the employee's service can be spared. It may be taken annually or left to accumulate to the credit of the employee, provided, however, that leave may not be accumulated for more then three years. If it is not desire to take the entire leave accumulated, the leave earned for the first year, or the first and second years, may be taken, provided that no employee, except at termination of service, may be granted more than ninety days leave with pay at one time. Employees will be paid for cumulative leave at the rate earned when the leave became due at the end of the tenth month of each respective year.

29. In case an employee serves part of a year on the monthly or annual basis and part on the hourly basis, he will be allowed twenty day cumulative leave, except that if he has served eight months or more on the monthly or annual basis during the year he will be granted thirty days cumulative leave.

Travel Leave

30. Employees who travel to points outside the tropics, when on cumulative leave, will be allowed seven days additional leave (or travel leave) with full pay. Travel leave may be allowed approximately once a year and is not cumulative.

31. Employees will be compensated for travel leave and annual leave taken in conjunction with cumulative leave at the rate earned when cumulative leave last became due.

32. After accumulating leave for three years, an employee ceases to earn additional cumulative leave until he is granted all or part of the cumulative leave already earned, unless he shall enter on cumulative leave within two months after completing the third year, or be ordered by the Governor to defer taking leave for official reasons.

33. When an employee's services are terminated on account of misconduct or unsatisfactory service, any annual leave due and travel leave will be forfeited, and cumulative leave will also be forfeited unless written notification has been given that the employee has accumulated the leave, or the four months period within which the employee may enter on leave has passed. Such written notice must be given by employees as soon as possible after cumulative leave becomes due.

34. When an employee's service is terminated, a cash payment in commutation of leave will be made to him for the number of days' cumulative leave due, plus the annual leave due. In the event of his death his estate will be paid the sum due.

35. Employees must enter on cumulative leave within four months after the date when it becomes due, except when accumulated, or unless otherwise authorized by the Governor.

36. Employees must report from leave within one week after the authorized leave expires or forfeit pay for the leave. In case of unavoidable delay, the Governor will decide whether the circumstances warrant an exception to this rule.

37. No restrictions are placed on the localities where leave may be spent.

38. Any employee transferred from the present force to the permanent operating force will be paid at the time of transfer, in addition to his regular compensation, the amount he would have received in payment for leave had he been separated from the service at the time of transfer.

54 39. Leave may be taken only at the convenience of heads of departments, who may direct an employee to accumulate his leave if necessary for the conduct of the work.

40. Leave without pay may be granted by the Governor to all employees, including laborers, for such period as may be prescribed by him.

Office Hours and Hours of Labor

41. Officers hours and hours of labor will be fixed by the Governor within the limits prescribed by law.

42. This order shall take effect from and after the 1st day of April 1914.

WOODROW WILSON.

THE WHITE HOUSE,
2 February 1914.

[No. 1888.]

55 *Exhibit B to stipulation*

Executive Order

Relating to conditions of employment in the Panama Canal service

By virtue of the authority vested in me by law, the general conditions of employment governing employees on the Isthmus of Panama, necessary for the completion, care, management, maintenance, sanitation, government and operation of the Panama Canal, the Canal Zone, the Panama Railroad, and other adjuncts, provided by the Executive Order of February 2, 1914, are hereby amended by rescinding paragraphs numbered 22 to 41, inclusive, and substituting in lieu of such rescinded paragraphs the following:

Annual Leave

22. Twenty-four days annual leave will be allowed each employee for each year after entry into service and any annual leave not used prior to the end of the service year in which it is earned shall be thereafter in the same status and subject to the same rules as cumulative leave.

23. The service year shall date from the day on which an employee's pay in the permanent organization begins.

24. Absences of one-half day or more, when regularly authorized, will be charged against annual leave; also absences on account of illness or injury, upon the certificate of an authorized physician in the service of The Panama Canal, except that in the following classes of cases no payment shall be made for time lost, but the time shall be charged against the annual leave:

(a) Illness due to the fault of the employee, as venereal disease and alcoholism.

(b) Injury due to the employee's willful intention to bring about the injury or death of himself or another.

(c) Elective surgical operations to relieve conditions existing prior to service on the Isthmus.

25. Teachers employed only during the school months, from October to June, inclusive, may be granted not to exceed twenty-four days leave within those months to cover illness or emergency, but will not be entitled to any other leave with pay and will be entitled to no leave with pay from July to September, inclusive.

26. In the cases of hourly and per diem employees annual leave on account of sickness or injury shall be based upon a day of eight hours.

27. Not more than fourteen days annual leave may be taken during the first six months of a service year. In case of illness or injury in the first six months, to cover which no annual leave remains to the employee's credit, the time lost will be charged against the annual leave remaining for the year, and payment will be made after completing ten months of the service year. After the entire twenty-four days annual leave has been used, additional leave in that service year on account of illness or injury will be deducted from the cumulative leave for that year and when the cumulative leave becomes due the employee will be paid.

28. After exhausting both annual and cumulative leave for the year, additional absence on account of illness or injury will be without pay, except such compensation as may be prescribed by law for employees receiving personal injuries.

Cumulative Leave

29. Thirty days cumulative leave will be allowed each employee paid on a monthly or annual basis for each year of his service, and twenty days to each employee paid on an hourly basis. This leave will be due after completing ten months' service each year and may be taken when the employee's service can be spared. It may be taken annually or left to accumulate to the credit of the employee, provided, however, that the maximum number of days leave with pay of all kinds which may be granted at any one time or which may be commuted into a cash payment at termination of service is 120.

30. After cumulative or annual leave is earned and due it may be taken at such times and in such numbers of days as may be satisfactory to the Governor.

31. Leave taken after the close of the service year in which it was earned shall be paid for at the rate of pay received at the end of the tenth month of the service year in which the leave was earned. When an employee enters on a leave of absence which consists of or includes annual leave earned in the same year in which he enters on the leave, such annual leave shall be paid for at the rate received by the employee when he entered on the leave.

32. In case an employee serves part of a year on the monthly or annual basis and part on the hourly basis, he will be allowed twenty days cumulative leave, except that if he has served eight months or more on the monthly or annual basis during the year he will be granted thirty days cumulative leave.

Travel Leave

33. Employees who travel to points outside the tropics, when on cumulative leave, will be allowed seven days additional leave (or travel leave) with full pay, provided the total of all leave with pay granted shall not exceed 120 days. Travel leave may be allowed approximately once a year and is not cumulative.

34. Employees will be compensated for travel leave at the rate earned when cumulative leave last became due.

General Provisions

35. After accumulating leave of all kinds amounting to 120 days, an employee ceases to earn additional cumulative leave until he is granted all or part of the cumulative leave already earned, unless he shall enter on cumulative leave within two months thereafter, or be ordered by the Governor to defer taking leave for official reasons.

36. When an employee's service is terminated, a cash payment in commutation of leave will be made to him for the number of days cumulative leave due, plus the annual leave due. In the event of his death his estate will be paid the sum due.

37. Employees must report from leave within one week after the authorized leave expires or forfeit pay for the leave. In case of unavoidable delay, the Governor will decide whether the circumstances warrant an exception to this rule.

38. No restrictions are placed on the localities where leave may be spent.

39. Any employee transferred from the present force to the permanent operating force will be paid at the time of transfer, in addition to his regular compensation, the amount he would have received in payment for leave had he been separated from the service at the time of transfer.

40. Leave may be taken only at the convenience of heads of departments, who may direct an employee to accumulate his leave if necessary for the conduct of the work.

41. Leave without pay may be granted by the Governor to all employees, including laborers, for such period as may be prescribed by him.

57 Office Hours and Hours of Labor

42. Office hours and hours of labor will be fixed by the Governor within the limits prescribed by law.

This order shall take effect on and after the 31st day of December 1916, and shall apply to all classes of leave with pay earned and due as of that date and thereafter.

WOODROW WILSON.

THE WHITE HOUSE,
15 January 1917.
[No. 2514.]

58 *Exhibit C to stipulation*

THE PANAMA CANAL

CANAL ZONE

Executive Department

UNITED STATES OF AMERICA,
Canal Zone, ss:

I, F. H. Wang, Executive Secretary of The Panama Canal, do hereby certify that I am the custodian of the official records and documents of The Panama Canal, and that the documents which are listed below and are attached hereto are true and correct copies of the originals which are on file in the Executive Office of The Panama Canal:

Letter March 11, 1919.
Extract from The Panama Canal Record, April 9, 1919.
Circular May 21, 1927.
Memorandum August 2, 1927.
Extracts from Personnel Regulations, March 1, 1928.
Minutes of Wage Board meeting, March 12, 1929.
Minutes of Wage Board meeting, June 21, 1933.
Memorandum November 29, 1929.
Memorandum December 2, 1929.
Report March 25, 1930.
Memorandum October 29, 1930.
Memorandum October 31, 1930.

In witness whereof I have hereunto set my hand and affixed the Seal of the Government of the Canal Zone this 5th day of March, 1941.

F. H. WANG,
F. H. Wang,
Executive Secretary.

59 Copied/wrr.

BALBOA HEIGHTS,
March 11, 1919.

Mr. W. J. DOUGLAS,
Engineer of Maintenance, The Panama Canal,
Balboa Heights, Canal Zone.

Mr. W. C. HUSHING,
Representative, Panama Metal Trades Council,
Balboa Heights, Canal Zone.

SIRS: You are hereby appointed as a Board to advise me on wages for The Panama Canal and Panama Railroad employees on the gold roll who are members of the American Federation of Labor.

1. The Board is an advisory one to recommend rates of pay to the Governor and it is without authority to make promises except as to its recommendations.

2. This Board will recommend wages for positions filled in whole or part by employees who are members of the American Federation of Labor.

3. Rates will generally be equal to States rates plus 25% for similar positions in the Government service in continental United States. If there are no similar Government positions, Canal rates may be based on nongovernment ones, plus 25%; provided, however, such rates properly coordinate with similar or related ones in the Canal service which have been established directly on Government ones.

4. The Board will not make recommendations for individuals but for positions.

5. Employees who are members of the A. F. of L. will as heretofore take up matters of wages with their supervisory officers, including Heads of Divisions. If dissatisfied with the ruling received, they may then submit their claims through the A. F. of L. to the Wage Board. If the Governor, after having received the report of the Wage Board, disapproves the request in whole or part, it shall not be resubmitted by the individual to the Governor or the Board, but may again in not less than six months be resubmitted to the Board through the A. F. of L. local organization.

60 6. The Board will hold regular meetings on the first Monday of each month, and such additional ones as are necessary. Requests by Heads of Divisions and Departments, or by the A. F. of L. for change in wages should be submitted to the Governor at least ten days before the meeting at which they will be considered. All requests, whether from the A. F. of

L. or from Heads of Divisions and Departments shall be submitted to the Board through the Governor, and all replies by the Board shall be to the Governor. The Board, however, may, in considering rates of pay, ask for such information orally or in writing from any Canal employee as may be necessary or desirable.

7. The Bureau of Statistics will keep a record of all meetings, and will collect and arrange necessary data, and prepare the basic data of States rates for use of the Board.

Additional instructions will be issued from time to time as may be necessary.

Respectfully,

(S) CHESTER HARDING,
Governor.

61 Copied/wrr.

EXTRACT FROM THE PANAMA CANAL RECORD, APRIL 9, 1919

BOARD ON RATES OF PAY—GOLD ROLL

THE PANAMA CANAL, EXECUTIVE OFFICE,
Balboa Heights, C. Z., March 31, 1919.

To All Concerned:

1. Under date of March 11, 1919, I addressed the following letter to the Engineer of Maintenance and to a representative appointed by the Metal Trades Council:

"You are hereby appointed as a board to advise me on wages for The Panama Canal and Panama Railroad employees on the gold roll who are members of the American Federation of Labor.

"(1) The Board is an advisory one to recommend rates of pay to the Governor and is without authority to make promises except as to its recommendations.

"(2) This Board will recommend wages for positions filled in whole or part by employees who are members of the American Federation of Labor.

"(3) Rates will generally be equal to States' rates plus 25 percent for similar positions in the Government service in continental United States. If there are no similar Government positions, Canal rates may be based on nongovernment ones, plus 25 percent; provided, however, such rates properly co-ordinate with similar or related ones in the Canal service which have been established directly on Government ones.

"(4) The Board will not make recommendations for individuals but for positions.

"(5) Employees, who are members of the American Federation of Labor, will as heretofore take up matters of wages with their supervisory officers, including heads of divisions. If dissatisfied with the ruling received, they may then submit their claims through the American Federation of Labor to the Wage Board. If the Governor, after having received the report of the Wage Board, disapproves the request in whole or part, it shall not be resubmitted by the individual to the Governor or the Board, but may again in not less than six months be resubmitted to the Board through the American Federation of Labor local organization.

"(6) The Board will hold regular meetings on the first Monday of each month, and such additional ones as are necessary. Requests by heads of divisions and departments, or by the American Federation of Labor for change in wages should be submitted to the Governor at least 10 days before the meeting at
62 which they will be considered. All requests, whether from the American Federation of Labor or from heads of divisions and departments shall be submitted to the Board through the Governor, and all replies by the Board shall be to the Governor. The Board, however, may, in considering rates of pay, ask for such information orally or in writing from any Canal employees as may be necessary or desirable.

"(7) The Bureau of Statistics will keep a record of all meetings, and will collect and arrange necessary data, and prepare the basic data of States' rates for use of the Board.

"Additional instructions will be issued from time to time as may be necessary."

2. It is the intention of paragraph 5 of the letter above quoted that all matters for the consideration of the Wage Board come to the Board through the Governor, as is definitely stated in paragraph 6.

3. All requests for changes in rates of pay should be accompanied by a statement of what is claimed and the reason therefor, only one subject to be treated in each letter.

4. The Board will, upon request, hold hearings where those interested may be present in order further to explain their contention. The Board desires to point out, however, that such hearings should not generally be requested. All complaints or requests should be clearly and fully stated in writing, so that the time of the Board may not be unduly occupied with hearings.

CHESTER HARDING,
Governor The Panama Canal,
President The Panama Railroad.

63 Copied/wrr.

BALBOA HEIGHTS, C. Z.,
May 21, 1927.

WAGE BOARD

To All Concerned:

1. The existing board, established by the Governor's letter of March 11, 1919, and known as the "Board on Rates of Pay—Gold Roll," will hereafter be known as the "Wage Board." Its composition and procedure will be as follows:

2. The Board will be composed of two members: one appointed by the Governor and one nominated by the Panama Metal Trades Council and approved by the Governor. The latter member must be a bona fide employee of The Panama Canal or the Panama Railroad.

3. The Board will consider only such cases as are referred to it by the Governor except that, when the wages of any employee or group of employees have been definitely established by the Governor on the basis of rates paid in the United States, the Board may recommend such revisions as are indicated by changes in the basic rates. The functions of the Board are advisory and it is without authority to make promises except as to its recommendations. Recommendations for rates are to be made for positions and not for individuals.

4. Cases referred to the Board shall include, in general, those relating to hourly rates for all crafts, monthly rates derived from hourly rates, and monthly rates such as those for employees of floating equipment, in the transportation department of the Panama Railroad, or elsewhere, which are derived from rates paid for the same or similar services in the United States. Cases involving the rates for clerical positions will not ordinarily be referred to the Board.

5. Employees who desire wage adjustments should first take up the matter with their official superiors in their department or division. If a satisfactory adjustment is not secured they should forward their claims to the Governor, requesting submission to the Wage Board. Such claims may be forwarded either directly to the Governor or through labor organizations.

6. Claims for changes in rates of pay should be accompanied in each instance by a written statement of the rate desired and the arguments which are considered to justify it, together with such data as the employee or group of employees may have in support of the claim.

64 7. In recommending rates the Board will be guided by the provisions of Act of Congress of August 24, 1912, and of Executive Order of February 2, 1914, which provides that, "the salaries or compensation of employees shall in no instance exceed by more than twenty-five per centum the salaries or compensation paid for the same or similar services to persons employed by the Government in continental United States," and by the general Panama Canal policy of paying twenty-five per centum over pay for comparable work in Government service in the continental United States. When no similar Government positions exist, Canal rates may be recommended on the basis of not to exceed twenty-five per centum above salaries or compensation in non-governmental positions, provided that such rates coordinate with those of other employees of The Panama Canal and Panama Railroad.

8. The Chief of the Bureau of Statistics, or his Assistant, will act as Secretary to the Board and keep a record of all meetings. When cases have been referred to the Board the Secretary will present to the Board as early as practicable a résumé of such data as are pertinent and available, and will secure through the Washington Office such additional data on States' rates as may be necessary for the proper consideration of the case. The Secretary is authorized to make such use of the clerical force of the Bureau of Statistics as may be required for carrying out these duties.

9. The Board, in connection with consideration of cases referred to it, is authorized to secure directly from any Canal official or employee such information as it may deem necessary or desirable.

10. When the Board summons an employee to appear before it for its own purposes he will be excused by his superior, without loss of leave, being considered engaged on official business. Such summons will be made in writing by the Secretary of the Board. Time lost by individuals in appearing before the Board for their purposes and when not summoned directly by the Board will be charged against the employees' leave and covered by Form 484.

11. Requests for wage adjustments, after having been acted upon by the Board and disapproved in whole or in part by the Governor, shall not be resubmitted within six months from the date of the Governor's decision.

M. L. WALKER,
Governor.

SP*w.

65 Copied/WTT.

BALBOA HEIGHTS, C. Z.,
August 2, 1927.

MEMORANDUM FOR SALARY AND WAGE BOARDS

1. To clarify the situation with respect to the fields of the two Boards, I have approved the allocation of cases to the respective Boards indicated on the attached sheets. The rates marked with an asterisk (*) will normally be referred to the Wage Board, the others to the Salary Board.

2. The general principle which has governed in making this division is that rates adjusted primarily on the basis of States data of actual employment, and wherein administrative coordination among departments is not involved strongly, should go before the Wage Board, and cases wherein the adjustment is locally administrative and coordination is a prime factor should go to the Salary Board. However, as some cases lie in a twilight zone the allocation is in some instances provisional. It may be departed from whenever the Governor may desire the recommendation of the other Board than that to which the case is assigned by this list. Further, as the action of either Board is advisory there is no preclusion of direct action on rates by the Governor when he is satisfied as to the merits of the case.

3. It should be further noted though there is a division of cases between the Boards the basic factors governing their deliberations are the same; both must bear in mind the limitations of the law with respect to the 25 per cent increment and also the requirements of coordination within the Canal and Panama Railroad service on the Isthmus.

M. L. WALKER,
Governor.

Enclosure:
List of rates.

66 Copied/WTT.

MARCH 1, 1928.

EXTRACTS FROM PERSONNEL REGULATIONS

See file No. 2-F-105

33. Wage Board

33.1. Membership.—The Wage Board, formerly known as the "Board on Rates of Pay—Gold Roll" will be composed of 2 members: 1 appointed by the Governor and 1 nominated by the

Panama Metal Trades Council and approved by the Governor. The latter member must be a bona fide employee of The Panama Canal or the Panama Railroad.

33.2. Functions of the Board.—The Board will consider only such cases as are referred to it by the Governor except that, when the wages of any employee or group of employees have been definitely established by the Governor on the basis of rates paid in the United States, the Board may recommend such revisions as are indicated by changes in the basic rates. The functions of the Board are advisory and it is without authority to make promises except as to its recommendations. Recommendations for rates are to be made for positions and not for individuals.

33.3. Cases handled.—Cases referred to the Board shall include, in general, those relating to hourly rates for all crafts, monthly rates derived from hourly rates, and monthly rates such as those for employees of floating equipment, in the transportation department of the Panama Railroad, or elsewhere, which are derived from rates paid for the same or similar services in the United States. Cases involving the rates for clerical positions will not ordinarily be referred to the Board. (See 34.2.)

33.4. Procedure for securing readjustments.—Employees who desire wage adjustments should first take up the matter with their official superiors in their department or division. If a satisfactory adjustment is not secured they should forward their claims to the Governor, requesting submission to the Wage Board. Such claims may be forwarded either directly to the Governor or through labor organizations.

33.5. Data to support claims.—Claims for changes in rates of pay should be accompanied in each instance by a written statement of the rate desired and the arguments which are considered to justify it, together with such data as the employee or group of employees may have in support of the claim.

33.6. Twenty-five percent limitation not to be exceeded.—In recommending rates the Board will be guided by the provisions of Act of Congress of August 24, 1912, and of Executive Order of February 2, 1914, which provide that, "The salaries or compensation of employees shall in no instance exceed by more than twenty-five per centum the salaries or compensation paid for the same or similar services to persons employed by the Government in continental United States," and by the general Panama Canal policy of paying twenty-five per centum over pay for comparable work in Government service in the continental United States. When no similar Government positions exist, Canal rates may be recommended on the basis of not to exceed twenty-five per centum above salaries or compensation in nongovernmental posi-
67 tions, provided that such rates coordinate with those of

other employees of The Panama Canal and Panama Railroad. (See 32.1.)

33.7. Secretarial service and data for board meetings.—The Chief of the Bureau of Statistics, or his assistant, will act as secretary to the Board and keep a record of all meetings. When cases have been referred to the Board the secretary will present to the Board as early as practicable a resume of such data as are pertinent and available, and will secure through the Washington Office such additional data on States' rates as may be necessary for the proper consideration of the case. The secretary is authorized to make such use of the clerical forces of the Bureau of Statistics as may be required for carrying out these duties.

33.8. Official information available.—The Board, in connection with consideration of cases referred to it, is authorized to secure directly from any Canal official or employee such information as it may deem necessary or desirable.

33.9. Allowance of time for witnesses.—When the Board summons an employee to appear before it for its own purposes he will be excused by his superior, without loss of leave, being considered engaged in official business. Such summons will be made in writing by the secretary of the Board. Time lost by individuals in appearing before the Board for their purposes and when not summoned directly by the Board will be charged against the employees' leave and covered by form 484. (See 19.2, 47.)

33.10. Resubmission of cases after decision.—Requests for wage adjustments, after having been acted upon by the Board and disapproved in whole or in part by the Governor, shall not be resubmitted within 6 months from the date of the Governor's decision.

68 Copied—phb.

WAGE BOARD

Minutes of 287th Meeting

March 12, 1929

Present: Major R. A. Wheeler, Mr. H. A. McConaughey.
The Board met in the Board Room at 8:58 a. m.

Construction Rates, Electrical Employees

1. Mr. A. C. Garlington, Electrical Engineer, appeared before the Board. Mr. McConaughey said that Mr. Dyer representing

the electricians had advised that it would not be necessary to have any of the employees appear in connection with this case inasmuch as there was no dispute as to the basic facts of the work performed, but only a question of interpreting the circular of February 19, 1925, establishing conditions under which construction rates are to be paid. Major Wheeler read aloud the memorandum from the Governor for the Wage Board under date of March 1, 1929, referring this case to the Board:

"The opinion of the Wage Board is desired on the merit of the request for construction rates. However, the Wage Board must be bound by this instruction, that no extension whatever is to be made in the application of the so-called 'construction rate.' Both Governor Walker and myself have felt that this rate should never have been authorized, and both of us have given much thought to its abolition, although no equitable method of abolition has yet suggested itself."

2. Mr. McConaughey said that it seemed clear to him that under the provisions of the circular, construction rates should be paid to the electricians who had been employed on the installation of new machine shop equipment and new power feeder and panel board at the roundhouse at Balboa Shops, as requested by the employees in this case. Mr. Garlington said that the electricians in the marine gang are engaged on ship work and shop work; that they are not building trades employees but maintenance men doing work for the Mechanical Division. He said this gang was the old Stevens gang which had been in the Mechanical Division for twelve years then was transferred to the Electrical Division for the sake of supervision by the Electrical Engineer but without change in duties. Mr. McConaughey said these men are wiremen in the Electrical Division and under the circular were designated as building trades employees, and for the Electrical Engineer to deny that they were building trades employees would be equivalent to making an arbitrary rule for the interpretation of the circular. Major Wheeler said that the work
69 at the round house was not the kind of job for which construction rates are approved by the circular. Mr. McConaughey said there was no such division in the circular. The members were unable to agree. Their dissenting opinions are expressed as follows:

Opinion of Major R. A. Wheeler, Member, Wage Board

(a) "1. The work on which the construction rate is being requested consisted of the installation of certain machine tools in the roundhouse, Balboa Shops, for which it was necessary to ex-

tend the existing wiring system. The work was performed entirely within the Balboa Shops area, which may be termed the Panama Canal Navy Yard. If this work had been performed in a United States Navy Yard, and such work is regularly performed in U. S. Navy Yards, it would have been done by the regular Navy Yard force at the Navy Yard rate, which, of course, is a maintenance rate and the basis of our rates.

(b) "2. The work was done by a unit of the Electrical Division, consisting of a leading man and a gang of men organized for the specific purpose of performing marine and allied electrical work in the Balboa Shops area. When originally organized, this gang was considered a maintenance unit comparable to a gang of electrical wiremen in any of the United States Navy Yards. It has been consistently so considered ever since. I consider that wiremen assigned to this unit and performing the usual routine work in the Balboa Shops area are maintenance employees and are not to be classified as building trades employees, as provided in the circular on Maintenance and Construction Rates, Building Trades.

(c) "3. It is therefore recommended that the construction rate be denied."

Opinion of H. A. McConaughey, Member, Wage Board

(a) "1. These requests for construction rates should be considered entirely on the basis of the circular of February 19, 1925, which was issued to differentiate construction and maintenance rates. This circular states that construction rates will be allowed to all building trades employees except strictly maintenance employees when performing work on new buildings or additions or alterations to old buildings requiring a minimum labor charge of $300.00 estimated at maintenance rates.

70 (b) "2. The work in question admittedly cost in excess of $300.00 estimated at maintenance rates. It is evident, therefore, that these men should receive the construction rate unless they are strictly maintenance employees.

(c) "3. The circular referred to above states that construction rates will be allowed on the work defined above for certain designated employees, including wiremen in the Electrical Division. These men are wiremen in the Electrical Division. Therefore, under the terms of the circular they clearly cannot be considered as strictly maintenance employees. If not strictly maintenance employees the circular definitely provides that they should receive construction rates on the work in question.

(d) "4. I would call your attention to the fact that Major Wheeler and Mr. Garlington have apparently formed their opinions on this case with an entire disregard of the terms of the circular which was issued to differentiate between the construction and maintenance rates. Their opinion is based on the fact that they believe that work of this character would be performed in a United States Navy Yard by the regular Navy Yard force at the Navy Yard rate of pay. This conclusion might have some weight if the circular governing the matter was based on whether or not the work in question would be so performed. As the circular was not formulated on this basis I consider that Major Wheeler's contention is entirely extraneous to the question at issue. I stand squarely on the circular and claim that the terms of the circular clearly entitle these men to the construction rate."

Operator-Machinists on *Siri*

3. This case came before the Board by action of the Governor on a memorandum from the Superintendent of Dredging to the Engineer of Maintenance, February 11, 1929, transmitting a letter from Messrs. C. M. Banan and W. T. Johnston, February 7, 1929, requesting that their salaries be coordinated with those on supply boats. The members noted the review of the case submitted by the Chief of the Bureau of Statistics under date of March 4, 1929. The case was continued to the meeting to be held on March 19 when representatives of employees might be present.

Engineers on Ferry Tug *Gaither*

4. This case came before the Board by action of the Governor on a memorandum from the Superintendent of Dredging
71 to the Engineer of Maintenance, February 11, 1929, transmitting a request from Engineers A. S. Wallace and W. L. Cassidy, January 29, 1929, for an adjustment to make their rate comparable with the rate paid the Masters on the *Gaither*. The Board noted a review of the case submitted by the Chief of the Bureau of Statistics under date of March 6, 1929. It was agreed to hold a hearing of this case at the meeting to be held March 19.

Foreman, Sand and Gravel Plant, Gamboa

5. This case came before the Board by action of the Governor on memorandum from the Superintendent of Dredging to the Engineer of Maintenance, February 11, 1929, transmitting a letter from foreman A. W. Wynne, February 6, 1929, requesting a rate

coordinated with that of Locomotive Engineer or with one of the supervisory rates around $310.00. The Board noted a review of the case submitted by the Chief of the Bureau of Statistics under date of March 6, 1929. It was agreed to consider the case at the meeting to be held on March 19.

Drill Boat Employees

6. The Secretary reported that the data which had been received was being compiled by Mr. Patterson. Mr. McConaughey said it looked as if all of the data had arrived except new Union Scale to be effective in April and probably it would be as well to proceed to consideration of the case. It was agreed that a summary of the data could be furnished to all concerned in advance of the next meeting at which employees might be present to present any further statements.

Employees on *Las Cruces*

7. This case came before the Board by action of the Governor on memorandum from the Engineer of Maintenance, March 3, 1929 recommending reference to the Board. The Board noted the letter from the Superintendent of Dredging, February 13, 1929; letter from Mr. Louis Townsley, Secretary of The Panama Canal Dredgemen, February 23, 1929; and a memorandum from the Chief of the Bureau of Statistics to the Engineer of Maintenance, February 28, 1929. Mr. McConaughey said the men would not be satisfied with the adjustments proposed by the Superintendent of Dredging or the Chief of the Bureau of Statistics and would desire to appear before the Board to present arguments. The case was continued accordingly.

Employees on Floating Equipment

8. The Board noted the approval of the Governor of the rates recommended in paragraph 19 of the Minutes of the 286th Meeting, January 26, 1929, for positions on Pipe Line Suction Dredges, Dipper Dredges, Floating Cranes, Hydraulic Grader, and Foremen of Barge Repair at Gamboa and Balboa.

72 Building Trades Construction Rates

9. The Board noted the approval of the Governor of the following rates to be effective March 8, 1929, as recommended on the memorandum from the Secretary March 4, 1929:

Craft	Rates per hour	
	Journeyman	Foreman
Bricklayer	$1.93	$2.08
Carpenter	1.48	1.61
Electrician	1.64	1.79
Structural Ironworker	1.67	1.82
Metal Lather	1.65	1.79
Painter	1.46	1.61
Plasterer	1.92	2.07
Plumber	1.68	1.83
Sheet Metal Worker	1.49	
Pipefitter (Steamfitter)	1.69	
Tilesetter	1.71	1.86
Cablesplicer—Wireman. (Same as electrician.).		
Bricklayer, special	[1] 1.60	

[1] Average of maintenance and construction rates for bricklayer.

10. The Board noted that the above schedule increased by 1 cent an hour the rates for Metal Lather Sheet Metal Worker, and by 2 cents an hour the rate for Pipefitter (Steamfitter), over the rates effective from November 1, 1928, to March 7, 1929, inclusive, there having been no change in the rate at the adjustment of of January 1, 1929. The other rates remain unchanged by the adjustment effective March 8, 1929.

11. The Board adjourned at 10:00 a. m.

(Signed) PAUL.
Seymour Paul,
Secretary.

Approved:

(Signed) R. A. WHEELER.
R. A. Wheeler,
Member.

(Signed) H. A. McCONAUGHEY.
H. A. McConaughey,
Member.

73 Copied—phb.

BALBOA HEIGHTS, C. Z.,
June 22, 1933.

WAGE BOARD

Minutes of the 332d Meeting
June 21, 1933

Present: Major W. E. R. Covell, Mr. H. A. McConaughey.

1. The Board met in the Board Room at 8:30 a. m.

Hourly Rates for Chauffeurs

2. Major Covell said that he was of the opinion that hourly rates should be established for construction projects only but

nothing should be said about limiting their application to dump trucks. Mr. McConaughey said that he did not like the hourly rates for chauffeurs, but in view of the circumstances he thought it necessary to agree to their establishment for work on construction jobs.

3. The members agreed to recommend that hourly rates corresponding to the existing monthly rates and being the same as were made effective June 10, 1932, for work at Madden Dam, should be authorized for use on construction jobs as follows:

Chauffeur (gold roll)

Length of Service:	Rate per hour
Less than 1 year	$0.84
1 to 2 years	.87
2 to 3 years	.90
3 to 4 years	.94
More than 4 years	.97

Basic Rate for Chauffeurs

4. Major Covell said that he is convinced that the present Canal rates are legal; that they do not exceed 25% over the compensation for similar employment in the Government in the United States, and that the choice of Government bases for the Canal hourly rates is an administrative matter in the hands of the Governor. He said that the several factors which had been used in arriving at the Canal rate for chauffeurs had resulted in very high rates and while the rates are legal, he considered that in some future adjustment changes might be made in the present method of establishing the rates. At present, however, he said on account of the 15% deduction which is being made from the pay of all Government employees, and the apparent policy of Washington to hold off wage reductions, he was willing to agree to postpone action.

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5. Mr. McConaughey said that he was in agreement with the foregoing. The members then proceeded to a detailed consideration of the points raised by the Bureau of Efficiency, taking up in order the several features on which Messrs. Evans and Gunther of that Bureau had commented; and submitted the following as a joint opinion of the members of the Wage Board of The Panama Canal:

Opinion of Members

6. The first exception taken by the Bureau of Efficiency is expressed as follows in the report of Messrs. Evans and Gunther:

"*Paragraph 1 (a).* A monthly rate computed by multiplying a basic daily wage by 28 results in paying for 336 working days

during the year, whereas proper deduction for 52 Sundays and 7 holidays leaves only 306 working days. The payment for 30 days during which no work is performed amounts to increasing the basic wage by approximately 10 per cent.

7. These chauffeurs actually work 306 working days plus 24 Sundays and holidays, which would make 330 days. They are also required to work about 20 minutes overtime every day in order to have the equipment in service for a full 8-hour period. This overtime would amount to an equivalent of 14 days per year which, added to the 330 days stated above, would make a total of 344 8-hour days. This number could be greater because overtime on Sunday and holiday work could be counted as time and a half but, without counting these days as time and a half, it is obvious that basing the rate of pay on 336 working days per year seems amply justified.

8. Quoting further from the report to the Bureau of Efficiency:

"(b) The high scale of wages paid to Post Office chauffeurs in the field service should not have been used in determining the wage scale of Canal chauffeurs for the reason that the duties and responsibilities of the two services are not comparable. The work of the Post Office chauffeurs differs from those employed by the Panama Canal in the following respects:

"1. The valuable loads carried make it necessary to place practically all Postal chauffeurs under bond.

75 "2. They must provide uniforms at their own expense.

"3. Much of their driving is in the congested areas of large cities, requiring more skill than is demanded in the small settlements in the Canal Zone. Furthermore, all trucks are operated on a time schedule.

"4. The work is hazardous. The chauffeur is required to carry arms and must protect the mail by force if occasion arises."

9. The differences in duties and responsibilities between the Post Office and Panama Canal services as cited by Messrs. Evans and Gunther are immaterial:

(a) The bond of post office chauffeurs probably costs them not to exceed $5 or $10 per year.

(b) Panama Canal chauffeurs must also provide their work clothing at their own expense.

(c) It is questionable that driving in the congested areas of large cities or anywhere else requires more skill than driving on the narrow, winding Canal Zone roads where there are no traffic signals, no-stop streets, no right-of-way, very few traffic laws, or in the narrow, congested streets of the city of Panama. With regard to time schedules, it is not believed that the time schedules in effect for post office chauffeurs are more exacting than time

schedules for Panama Canal chauffeurs when engaged in construction work.

(d) It is not believed that the work of the post office chauffeurs is more hazardous than hauling gasoline or explosives, a type of hauling often performed by Canal Zone chauffeurs.

10. If the argument of Messrs. Evans and Gunther as to the special skill and responsibility of post office chauffeurs has any merit, it should be taken into consideration that Panama Canal chauffeurs operate much heavier trucks than post office chauffeurs; that they are foremen over gangs of laborers, loading and unloading and distributing materials; that their time is engaged in construction work, operating heavy trucks on soft fills and steep grades, which requires a type of operating skill not required by post office chauffeurs.

11. Comment of the Bureau of Efficiency:

"With reference to the Navy Yards, the trucking work is of a general nature and therefore more comparable with the work performed at the Canal. It would have been more reasonable if the rates for Canal chauffeurs had been based solely on the wage scale in force in the Navy Yards."

76 12. It is believed that much of the trucking work in the Navy Yards is of a lower grade than Panama Canal trucking, so the higher rates of post office chauffeurs were also used. It is quite likely that a major part of the work of Navy Yard chauffeurs consists of short hauls within the yard and that they are only occasionally required to do trucking outside of the yard limits. In support of this view the following is quoted from a letter dated November 28, 1930, from the Commandant of the Mare Island Navy Yard:

"Most of the driving is confined within the Navy Yard limits and generally speaking the driving time is about 25% of the total time and 75% is devoted to loading and unloading."

13. The trucking performed by Panama Canal chauffeurs is all heavy trucking, not a mixture of light and heavy trucking, as is the case in the Navy Yards. The light trucking on the Canal is all performed by alien West Indian chauffeurs at rates of pay materially lower than rates paid to gold chauffeurs. About 90 per cent of the trucks operated by Panama Canal gold chauffeurs are 4- and 5-ton trucks and all of them are two tons or over. When the present rates for Panama Canal chauffeurs were established the majority of the trucks used in the Navy Yards were smaller than the 3½-ton trucks generally used by gold chauffeurs on the Panama Canal.

14. Comment of the Bureau of Efficiency:

"*Paragraph 4.* At the time this schedule was prepared there were 16 Navy Yards with maximum rates ranging from 56 to 75 cents per hour. The average maximum rate for the entire group was 65 cents per hour, but due to the higher rates prevailing at four of the six Navy Yards selected by the Wage Board, an average of 70 cents per hour was obtained and used as a base. As in the case of the Post Office rate schedule, the Navy Yard schedules provided intermediate and minimum rates which were, respectively 5 and 10 cents per hour less than the maximum rates. The Wage Board disregarded this fact, however, and took cognizance only of the maximum rates."

15. In view of the fact that one of the 16 yards is outside of the continental limits of the United States and can not be legally used for determination of our rates, and that other yards such as the Great Lakes, Charleston, New Orleans, etc., are very small, there is less justification in using an unweighted average of all yards than in using the six selected. The method used was considered by the Board, which fixed the rate, as the proper one at the time. The same six yards were used for other rates of pay; they have been used for about 15 years and prior to that time our rates were for several years based on 2, 3, or 4 yards rather than 6. This appears to be a matter of judgment to be considered by the Board whenever rates are discussed.

77

16. It is a fact that the navy yard schedules provide intermediate and minimum rates for chauffeurs but it is not a fact that the Wage Board disregarded this fact. These rates below the maximum rate have been quite generally disregarded in the Navy Yards. The most recent data we have on this question, which is of November 1930, indicates that four of the six yards which constitute our base, New York, Washington, Boston, and Philadelphia, use only the maximum rate. At Puget Sound they use the maximum and intermediate rates and Mare Island, apparently, uses all three rates.

17. Comment of the Bureau of Efficiency:

"*Paragraph 5.* In averaging the Post Office and Navy Yard rates, the Wage Board gave greater weight to the higher rates by the former despite the fact that the work of the Navy Yard chauffeurs was far more comparable with the work of the Canal. The average daily rate thus obtained was then multiplied by 28 to obtain a 'monthly' rate. To appreciate the significance of this computation it is necessary only to recall that in paragraph 3 a divisor of 306 working days was applied to the Canal equivalent of the annual Post Office rate in order to obtain a Canal daily rate. Multiplying this daily rate by 28 to place it on an annual

basis. The result is to add 30 days at full pay to the 306-day base, that is, to increase by approximately 10 per cent the rate which was determined by increasing the Post Office rate by 25 per cent. In other words, the final rate fixed by the Wage Board is some 35 per cent in excess of the rates paid in the Government institutions used for purposes of comparison.

"It is concluded that the action of the Wage Board does not comply with the provision of the Act of 1912 which stipulates that compensation for Canal employees shall not exceed by more than 25 per cent the compensation paid for the same or similar services by the Government in the continental United States."

18. In these paragraphs the Bureau of Efficiency Committee again assumes that we should use a 306-day basis in determining rates for Canal Zone chauffeurs and states that our failure to do so results in approximately a 10 per cent increase over the rate which should have been established and that it is concluded, therefore, that we are violating the 25 per cent differential established by the Panama Canal Act. This conclusion is, of course, based on the erroneous impression that Panama Canal chauffeurs only work 306 days per year.

78 19. The members of the Wage Board agreed that the present base rates for Panama Canal chauffeurs are legal; that they do not exceed 25 per cent of the compensation for similar employment in the Government service in continental United States (annual rates are not comparable unless the number of days and hours of employment are equal), and that the choice of a Government basis for Canal hourly rates is an administrative matter in the hands of the Governor.

20. Major Covell said that the several factors which had been used in arriving at the Canal rate for chauffeurs and resulted in very high rates, and that while the rates were legal, he considered that in some future adjustments changes might be made in the present method of establishing the rates. He said that while at present he does not favor a change he did not wish to be bound by this with respect to the future.

21. With respect to the use of the six highest navy yards in deriving the navy yard portion of the Canal rate, Major Covell said that such selection of yards might be debatable. Mr. McConaughey said that the selection of these yards was not peculiar to the chauffeurs' adjustment, but they were the six yards which had been selected as a base for practically all mechanical and related rates on the Canal. He said the fundamental reason for using these six yards is that there are only seven yards of any importance and the six used, Boston, New York, Philadelphia, Washington, Mare Island, and Puget Sound, are six of the seven major yards, and that the only important yard which was omitted

from the Canal base was Norfolk. Major Covell suggested that the position of the Canal might be stronger if Norfolk were included, as then the comparison would simply be with the average of rates in all the principal yards performing work comparable with the work of the Canal forces. However, he said that this matter was for future consideration as affecting all pay and that he did not believe that this method of establishing one particular rate should be disturbed at this time.

22. The members of the Board agreed that, on account of the present 15 per cent deduction which is being made from the pay of all Government employees and the apparent reluctance of the War and Navy Departments to make wage changes under present conditions it would be better not to make a further reduction in pay now.

23. The members agreed to recommend, for the reasons outlined above, that no changes be made in rates paid chauffeurs at this time.

24. The Board adjourned at 8:55 a. m. without date.

(Signed) PAUL,
Seymour Paul,
Secretary.

Approved:

(Signed) W. E. R. COVELL,
W. E. R. Covell, *Member.*
(Signed) H. A. McCONAUGHEY,
H. A. McConaughey, *Member.*

79 Copied—phb.

BALBOA HEIGHTS, C. Z.,
November 29, 1929.

MEMORANDUM FOR WAGE BOARD

1. It is my desire that very careful consideration be given to the changing of existing differentials in the Dredging Division, and I prefer to give the Wage Board a longer time before making report. I would like, if practicable, to have the two members unite in their recommendations, but if this is impracticable, I will consider separate reports. Report should be made not later than the end of March, 1930, and all positions on floating plant in the Dredging Division should be included. When tug rates are discussed the Marine Superintendent should give his views.

2. There appears to be but one controlling rate in the Dredging Division, and that is the pipe line dredge, which rate is based on plant operated by the United States. Until a comparable plant in other classes than the pipe line dredge is in operation by the

United States, I shall hereafter consider all rates to be based on the controlling rate.

3. For each class of floating craft a table should be prepared showing existing differentials and those recommended for the future.

4. While I do not bind myself for future adjustments, I do not mind saying that it is not usually my desire to lower subordinate rates when the controlling rate happens to move upward. In other words, from my present standpoint, the Board may expect that in any adjustments in the future in which the controlling rate moves upward, the subordinate rates will not necessarily be moved downward to fit the newly adopted differentials.

5. In view of the fact that most of the existing differentials have been in effect for some time, I have decided to authorize an adjustment effective December 1, 1929, in the Dredging Division based on the existing differentials. Any increases caused by this decision are hereby approved, effective December 1, 1929.

(Signed) H. BURGESS,
H. Burgess,
Governor.

HB/P.

80 Copied—phb.

BALBOA HEIGHTS, C. Z.,
December 2, 1929.

MEMORANDUM FOR PERSONNEL BUREAU

1. The Governor has authorized the following rates, effective December 1, 1929, excepting for the rates marked with an asterisk (*), which were authorized effective November 1, 1929:

Pipe Line Suction Dredge (No. 86)

Designation	Old rate	New rate
*Master	$308.00	[1] $316.00
Master, Dredge and Relay	329.00	[1] 336.00
Chief Engineer	304.00	[1] 311.00
Chief Engineer, Dredge and Relay	324.00	[1] 331.00
Chief Operater	304.00	[1] 311.00
Chief Operator in charge of Dredge and Relay	324.00	[1] 331.00
Operator	299.00	306.00
Mate	284.00	291.00
Senior Engineer	289.00	296.00
Engineer	279.00	286.00
Foreman Top	262.00	269.00
Foreman Second	242.00	249.00
Foreman Third	227.00	234.00
Pumpman, Relay	240.00	247.00

[1] Dual rates.

Dredge *Las Cruces*

Designation	Old rate	New rate
*Master	$329.00	$335.00
Chief Operator, acting as master	324.00	331.00
Chief Operator, not acting as master	304.00	311.00
Operator	299.00	306.00
Mate	284.00	291.00
Chief Engineer	324.00	331.00
Engineer	279.00	286.00
Electrician	279.00	286.00
Foreman:		
Top	292.00	299.00
Second	242.00	249.00
Third	227.00	234.00

Dipper Dredges

*Master	$349.00	$356.00
Operator	339.00	346.00
Mate	324.00	331.00
Chief Engineer	344.00	351.00
Engineer	309.00	316.00

Floating Cranes

*Master & Supervisor	324.00	$331.00
Master-Operator	309.00	316.00
Chief Engineer	309.00	316.00
Engineer	264.00	271.00

Hydraulic Grader

*Master	$299.00	$306.00
Mate	274.00	281.00
Nozzleman	242.00	249.00
Foreman	227.00	234.00
Pumpman	220.00	227.00

Drill Boat

*Master	$229.00	$306.00
Mate	284.00	291.00
Blaster	265.00	272.00
Engineer	265.00	272.00
Driller	255.00	262.00
Blacksmith	266.00	[1] 266.00

Gamboa Barge Repair

*Foreman	$261.00	$271.00

Balboa Barge Repair

*Foreman	$224.00	$231.00

Sand & Gravel Plant

*Foreman	$289.00	$296.00

[1] Navy Yard base.

2. When subsistence or use of mess appliances is furnished deductions will be made in accordance with Circular 680–3.

3. The rate for Master of Pipe Line Suction Dredge, as above, is based on rates paid for similar employment under the Government in Norfolk, Va., Wilmington, N. C., Savannah, Ga., and Galveston, Texas. The other rates have been derived by local differentials.

82 4. References: File 2–D–61/S; memorandum from Governor to Wage Board, November 29, 1929.

(Signed) JNO. H. SMITH,
Jno. H. Smith,
Acting Executive Secretary.

CC—Auditor.
Bureau of Statistics.
Personnel Bureau.
Supervising Rollkeeper.
Dredging Division.
Washington Office.
Files.
(7102–1)

83 Copied—phb.

BALBOA HEIGHTS, C. Z.,
March 25, 1930.

RATES OF PAY FOR DREDGING DIVISION EQUIPMENT, TOWBOATS, SUPPLY BOATS, MISCL.

By Major R. A. Wheeler, Member, Wage Board

1 Consideration of these rates is brought about by the memorandum addressed to the Board by the Governer on November 29, 1929, as follows:

(a) "1. It is my desire that very careful consideration be given to the changing of existing differentials in the Dredging Division, and I prefer to give the Wage Board a longer time before making report. I would like, if practicable, to have the two members unite in their recommendations, but if this is impracticable, I will consider separte reports. Report should be made not later than the end of March 1930, and all positions on floating equipment in the Dredging Division should be included. When tug rates are discussed the Marine Superintendent should give his views.

(b) "2. There appears to be but one controlling rate in the Dredging Division, and that is the pipe line dredge, which rate is based on plant operated by the United States. Until a comparable plant in other classes than the pipe line dredge is in op-

eration by the United States, I shall hereafter consider all rates to be based on the controlling rate.

(c) "3. For each craft a table should be prepared showing existing differentials and those recommended for the future.

(d) "4. While I do not bind myself for future adjustments, I do not mind saying that it is not usually my desire to lower subordinate rates when the controlling rate happens to move upward. In other words, from my present standpoint, the Board may expect that in any adjustment in the future in which the controlling rate moves upward, the subordinate rates will not necessarily be moved downward to fit the newly adopted differentials.

84 (e) "5. In view of the fact that most of the existing differentials have been in effect for some time, I have decided to authorize an adjustment effective December 1, 1929, in the Dredging Division, based on the existing differentials. Any increases caused by this decision are hereby approved effective December 1, 1929."

2. It is not practicable for the two members to unite in their recommendations. I have prepared a table showing present rates and differentials, Canal equivalent monthly rates based upon Government rates in the States for Master, P. L. S. D. #86, towboats, dipper dredge Master and *Las Cruces*, and my own recommended differentials and rates with the changes in pay resulting therefrom. I have also prepared a table showing comparison of the principal positions under consideration, which is a summary of the detailed table. These will be discussed under separate paragraphs below for each piece of equipment.

3. The existing small differentials below Masters have existed for many years and in spite of repeated presentations by the employees that smaller differentials are justified here because of different and special conditions of living and employment, officials of the Panama Canal have recognized that many of the rates can not be justified by law. There is always disagreement concerning comparability of equipment but it is noted that rates for dredges or rates for towboats are practically the same within any Government district, regardless of size of equipment. However, the Government equipment selected for comparison here is so similar and from such a wide territory that further discussion of incomparability is unwarranted. The argument that our rates should be based upon 25% above gross rates on Government equipment in the States instead of on net rate (gross rate minus value of subsistence and quarters allowances) has been forever settled, I hope, by the Governor's decision that it was not the intention of the law for employees to profit from allowances and the statement is merely repeated now as a reminder.

4. The two principal present bases for rates of pay now under consideration are governmental in part for suction dredges upon which several other pieces of equipment are based and commercial in part for towboats upon which supply boats and certain others are based. The Master of P. L. S. D. #86 is based upon the average of the net rates of pay for Masters of suction dredges at the U. S. Engineer Districts of Norfolk, Wilmington, N. C., Savannah, and Galveston, this average being increased by 25% and $30.00 per month added for subsistence. The subordinate positions of P. L. S. D. #86 have small differentials below Master which give rates considerably above the Canal equivalent of similar positions on Government suction dredges in the States. The following equipment is at present based upon the Master of P. L. S. D. #86:—Relay Barge, *Las Cruces*, Dipper Dredge, Floating Crane, Drill Boat, Hydraulic Grader, Sand and Gravel
85 Plant, and the two Barge Repair Stations. The Senior Master of towboats is based upon the average of 10 commercial rates and one governmental rate at the six ports of New York, Norfolk, New Orleans, Galveston, San Francisco, and Seattle, this average being increased by 25% and $30.00 per month added for subsistence. The subordinate positions on towboats are based upon Canal differentials instead of governmental or commercial differentials. The following equipment is at present based upon Senior Master of towboats: *La Valley*, *Faither*, *Siri*, Supply Boats, and *Favorite*. My recommendations propose to base all of above equipment, including motorboats, upon P. L. S. D. #86, which can be accurately based upon similar equipment in the Government service in the States.

5. There is one consideration in the wage structure on the Isthmus that has always received the most earnest attention of the Administration, and that is coordination. One of the most important bases of pay now in effect here is the U. S. Navy Yard. Craft rates here are based thereon and it is proper that all positions related thereto should be coordinated as far as practicable. This might mean an apparent conflict with the law as far as certain floating equipment is concerned, but as the number of positions involved in consideration of coordination is very small and the comparison with a craft rate very clear, it is believed that the rates may be considered as based upon States rates.

6. In recommending approval of establishment of the one base, P. L. S. D. #86, as at present obtained for Master, with differentials and rates for all other positions as shown on accompanying table, the following principal advantages are mentioned:

(a) The ease of securing reliable data from Governmental sources on which to base future adjustments as contrasted with

the difficulty of obtaining accurate data concerning the widely varying rates paid by private concerns where frequently the inclusion or exclusion of one or more of the higher or lower paid rates will materially affect the rates to be deduced for local employees;

(b) Having rates for employees on all Canal equipment determined from one base, which not only will greatly simplify our wage structure, but will insure that future increases and decreases will be made simultaneously for this considerable group of employees; and

(c) Continuity of employment and rates of pay for employees in the Government service are little influenced by changing business conditions and other economic disturbances that periodically affect employment and salaries in the commercial world. Reasonable assurance of steady employment, liberal vacation privileges, retirement, and other considerations aside from the
86 actual cash salary received, frequently make employment attractive under the Government even at rates of pay appreciably below the level prevailing in the commercial world. Consequently, to take the higher commercial rates as a base for the determination of local rates of pay, and then continue the perquisites that result from Government employment, results in a total remuneration in money and emoluments that cannot be justified by comparison either with Government or private wage schedules; and, is objectionable from another viewpoint in that it creates dissatisfaction among closely related employees who have their rates of pay determined from a Government base, where the perquisites and attractive features of employment under the Government have already been taken into consideration in fixing the rate.

7. The various pieces of equipment are discussed in the following paragraphs.

8. P. L. S. D. #86: Under the Panama Canal rules, the engineer of a Pipe Line Suction Dredge is required to hold a license, examination therefor requiring submission of satisfactory evidence that applicant has had certain experience or qualifications. Either one of two requirements of experience or one of qualification is satisfactory. The qualification that makes an applicant eligible is that of Journeyman Machinist and, while a lesser requirement would also comply with the regulations, it is believed to be fair and just to consider the highest qualification in determining the rate. The 26-day rate for Journeyman Machinist is $235.04, which with $30.00 added for subsistence in compliance with the Governor's circular would give a rate of $265.04, or, as I have called it for the purpose of determining a differential,

$266.00. This produces a differential of $50.00 below Master, while the present differential is $30.00 and the States differential, $109.90. Therefore, in the future, under my proposal, the engineer would be rated at $50.00 below Master and not based upon the craft rate which was merely used for determining the proper differential when considering coordination.

The next position to be considered is Chief Engineer, which based upon States rates would have a differential of $33.85 below Master. This, however, would bring the Engineer and Chief Engineer too close together in accordance with States practices. As Chief Engineer here has always received $25.00 per month more than Engineer and as the Chief Engineer in the States receives approximately $25.00 per month less than the Master, and as the second positions on most of the Government equipment are rated $25.00 below Master, I have recommended the Chief Engineer at $25.00 below Master. For Senior Engineer, I recommend the continuation of the present $15.00 differential below Chief Engineer, or $40.00 below Master.

87 In the present approved practice, on our dredges the Chief Operator succeeds the master instead of, as in the States, the Mate, which latter position is clearly out of step here. It is therefore not practicable, in my opinion, to base Chief Operator and Operator strictly upon States differentials, which are $109.03 and $116.66, respectively. Rating the Chief Operator on a parity with Chief Engineer and Operator with Senior Engineer, which conforms to organization practice long in effect here with apparently successful results, gives differentials of $25.00 and $40.00, respectively.

As previously stated, the Mate, if based strictly upon States rates, would have a differential of $86.46, but to enjoy that differential would require him to succeed to position of Master, which he is not qualified to do. Considering, therefore, the States differential and the duties here, the position of Mate at $85.00 below Master is eminently fair.

In the States there is but one position as Pipe Line Foreman, and in some cases these duties are performed by the Mate. The States differential is $127.09 below Master, which differential I have approximated for the second foreman. I have rated the top foreman at $20.00 below Mate in accordance with our past practice, second foreman $20.00 below top foreman, and third foreman $15.00 below second foreman, giving differentials of $105.00, $125.00, and $140.00, respectively.

The following positions are recommended to be abolished as they do not conform to States practice and because consideration of their duties has already been given in arriving at the recommended

differentials:—Master, dredge and relay; Chief Operator in charge of dredge and relay; and Chief Engineer in charge of dredge and relay.

9. Relay Barge: I have shown the rate for relay pumpman at the present rate of $247.00, which produces a differential of $69.00 below Master, P. L. S. D. It is not my intention to recommend, as I have shown, that the pumpman be permanently based upon this differential, but that he be continued on the present base of 5 cents under the hourly Steam Engineer rate for 28 days. This produces an automatic rate which because of the duties, nonsubsisted equipment, and exact comparability with the craft, should remain in effect as it is at present.

10. *Las Cruces:* I quote below the opinion that was approved by the Governor in establishing rates on the *Las Cruces:*

88

"Balboa Heights, C. Z.,
July 31, 1929.

"Opinion of Major Wheeler in Case of *Las Cruces*

"1. The primary consideration involved in this wage adjustment is comparability with government-owned equipment in the United States. In case it can be shown that the United States owns a dredge comparable to the *Las Cruces*, no other base should be considered by the Governor. Such is my opinion. However, it is realized that coordination is an important consideration and since it is my opinion that such consideration results in practically the same rates as are now derived from the comparison basis, my recommended rates may be considered as established upon both the bases of comparison and coordination.

"2. Comparison with Government-owned equipment in U. S.

"(a) The *Raymond* and our *Las Cruces* are diesel engine-driven dredges whose auxiliaries are, with minor exceptions, generally similar, thus leaving their main equipment for comparison on the basis of total capacity.

The *Las Cruces* has a large motor-driven pump which obtains its power from a combination of 3 or 4 911 H. P. diesel engines. Normal dredging requires 3 engines for this service, with the fourth engine shut down in reserve. Four engines are required for high pressure pumping.

The *Raymond* has its pump driven directly by a 1,000 H. P. diesel engine, which suffices for the low pressure work. The high pressure dredging is performed by boosting the discharge from the main pump with booster pumps supplied with power from a 1,000 KVA. motor generator set which reserves its power from two 800 H. P. diesel engine driven generators. In addition to booster pump operation, these two 800 H. P. units supply the

power for auxiliaries and are called "auxiliaries" in the Washington official correspondence, although they are really main units used for pumping, just as are the main units of the *Las Cruces*.

The comparison becomes 3,600 H. P. for the *Las Cruces* against 2,600 H. P. for the *Raymond*, with, in my opinion, no difference in the responsibility of operation. In fact, the supply of high voltage alternating current by the *Raymond* involving, as it does, additional care and responsibility in operation with the booster barge, more than compensates for the difference in horse power. Then, too, if horse power is an important item for comparison, the greater horse power of 12,000 at Miraflores should be considered.

89 "I am convinced that if the *Raymond* were owned by The Panama Canal, the *Las Cruces* and the *Raymond* would be coordinated on a parity.

The *C. B. Harris*, however, is not so comparable with the *Raymond*, although its rates of pay are higher.

The average of the Master's and Chief Engineer's rate of these two United States dredges is $327.00 and $316.00, respectively.

"(b) On both government and commercial dredges in the States, the subordinate positions are lower than corresponding positions on Dredge No. 86. However, this fact was previously noted in establishment of rates for the lower positions on Dredge No. 86 and as the differentials were not increased, it is believed proper that the rates on the *Las Cruces* should conform thereto."

The rate for Master established at that time, $329.00, conformed closely to the Canal equivalent of the States rate, $327.00, and also maintained, in my opinion, proper coordination in the Dredging Division. The subordinate rates, however, were too high and are recommended for change as shown in the table attached, both to conform to States rates and to maintain coordination.

On the States base, Chief Engineer would receive $316.00 here, but it is believed that the establishment of a $25.00 differential below Master for the second positions, Chief Operator and Chief Engineer, is of primary importance for purposes of coordination, as explained above for suction dredges. The difference in organization over States practice mentioned for suction dredges applies also to diesel dredges and hence Chief Operator is carried at $25.00 below Master while Mate is given a differential of $105.00 in order to place him on a parity with Mate of Suction Dredge, at $231.00.

The positions of Operator, Senior Engineer, Engineer, and the three foremen are given differentials that produce rates which place them on a parity with similar positions on suction dredges. This parity was approved in the original establishment of the

rates on the *Las Cruces* and it will be seen by comparison with States rates is justified. It should be noted that since the establishment of the *Las Cruces* rates, there was a $7.00 increase on P. L. S. D. which was applied, of course, to the *Las Cruces*.

The position of Electrician was placed on a parity with that of Engineer and it is my opinion that with proposed reduction in rate of Engineer to $266.00, this coordination is still proper from consideration of duties. Nevertheless, I recognize that based upon the craft rate, with $30.00 added for subsistence, the Electrician would receive the same rate, approximately, as Senior Engineer, or $276.00.

90 For the same reason as explained for suction dredge, it is recommended that the position of Chief Operator, Acting Master, be abolished.

Paragraphs 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, and 23 of memorandum omitted.

91 Copied—phb.

BALBOA HEIGHTS, C. Z.,
October 29, 1930.

MEMORANDUM

1. The increases in pay allowed for any position on pipe line suction dredges when operating with a relay or when the master is absent are hereby discontinued, effective December 1, 1930.

2. Major Wheeler's schedule will be used hereafter as a guide in adjustments of pay on the floating craft of the Marine and Dredging Divisions, unless in the meantime positions can be used on craft operated by the United States Government.

3. No rates of pay will be reduced, except as indicated in paragraph 1 above, but when basic rates are adjusted upward other positions will not move upward accordingly, unless Major Wheeler's schedule shows an increase is due. When the basic rates are lowered by any stated amount all positions will move downward the same amount.

4. Thus there will be a gradual approach toward the differentials recommended by Major Wheeler, but no changes in rates, except as indicated in paragraph 1, will be made either for men now in service or for new men taken on or promoted. Furthermore, the differentials recommended by Major Wheeler are to be considered as tentatively adopted, and if any specific inconsistencies are found in his schedule the matter may be taken up by a separate letter concerning any one or more positions.

(Signed) H. BURGESS,
H. Burgess,
Governor.

HB/P.

92 Copied—phb.

BALBOA HEIGHTS, C. Z.,
October 31, 1930.

Memorandum for Marine Superintendent, Superintendent of Dredging

RATES OF PAY—POSITIONS ON FLOATING CRAFT

1. The following memorandum from the Governor is quoted for your information and guidance:

"BALBOA HEIGHTS, C. Z.,
October 29, 1930.

"MEMORANDUM

"1. The increases in pay allowed for any position on pipe line suction dredges when operating with a relay or when the master is absent are hereby discontinued, effective December 1, 1930.

"2. Major Wheeler's schedule will be used hereafter as a guide in adjustments of pay on the floating craft of the Marine and Dredging Divisions, unless in the meantime positions can be based on craft operated by the United States Government.

"3. No rates of pay will be reduced (except as indicated in paragraph 1 above) but when basic rates are adjusted upward other positions will not move upward accordingly, unless Major Wheeler's schedule shows an increase is due. When the basic rates are lowered by any stated amount all positions will move downward the same amount.

"4. Thus there will be a gradual approach toward the differentials recommended by Major Wheeler, but no changes in rates (except as indicated in paragraph 1) will be made either for men now in service or for new men taken on or promoted. Furthermore, the differentials recommended by Major Wheeler are to be considered as tentatively adopted, and if any specific inconsistencies are found in his schedule the matter may be taken up by a separate letter concerning any one or more positions."

H. BURGESS, *Governor.*

(9478–1)

93 2. In conformity with the foregoing, until approval otherwise is authorized, rates of pay (except as specifically stated to the contrary) of all positions on the following floating equipment, and rates of pay for certain shore positions coordinated with floating equipment positions, shall be based on one controlling rate in the Dredging Division—and that is the rate for master of pipe-line suction dredge, which rate in turn shall be based upon rates paid on plant operated by the Engineer Corps, U. S. Army, in the United States, derived in accordance with the method of computation heretofore approved.

(a) Pipe line suction dredges—all positions.

(b) Relay barge—rate for relay pumpmen to be based on 5¢ under the hourly steam engineer rate, computed on a 224-hour monthly base. Rates for relay pumpmen will change automatically with any change in basic hourly rate.

(c) Dipper dredges—all positions.

(d) Floating cranes—all positions.

(e) Drill boats—all positions except blacksmith; rate for blacksmith will be derived by adding a $10.00 differential to the monthly equivalent of the 26-day hourly rate for blacksmith, heavy fire, Navy Yard base.

(f) Hydraulic grader—all positions, including pumpmen.

(g) Towboats—all positions.

(h) Craneboat *La Valley*—all positions except steam engineer; rate for steam engineer will be derived by adding a $20 differential to the monthly equivalent of the 26-day first-class rate for steam engineer, Navy Yard base.

(i) Ferry tug *Gaither* and launch *Siri*—all positions.

(j) Motorboats—rates for operator, motorboat, coxswain-engineer, and boatswain, heretofore have been determined administratively; present rates are continued but hereafter rates will be definitely tied to rate for master of suction dredge.

(k) Supply boats—all positions.

(l) Salvage tug *Favorite*—all positions, including radio operator.

(m) Gravel plant—foreman in charge.

(n) Barge repair station, Gamboa—foreman in charge.

(o) Barge repair station, Balboa—foreman in charge.

3. The schedule of differentials proposed by Major Wheeler and approved tentatively by the Governor is not reproduced in full in this memorandum due in part to the burden of typing and in part to the fact that the pay of none of the employees con-
94 cerned is affected at this time(except as indicated in paragraph 1 of Governor Burgess' memorandum), nor will be affected until such time as adjustments are made in the rate for master, pipe-line suction dredge, in conformity with changes in basic rates in the United States. The following tabulation, however, shows the proposed coordination in rates of pay for the greater portion of the various floating equipment positions and the relation between the master's rate on each piece of equipment to the rate for master, pipe-line suction dredge:

Equipment	Rate of pay for—							Master's differential with respect to rate for Master, P. L. S. D.	Change
	Master	Chief Engr.	Engr.	Chief Opr.	Opr.	Mate	Foreman		
Motorboats	$188							−$128	
Launch *Siri*	256							−60	−$5
Ferry tug *Caither*	261		$251					−55	−5
Supply Boats	261		236					−55	−5
Hydraulic Grader	296					$271	$211	−20	−10
Drill Boats	306		266			281		−10	
PLSD #86	316	$291	266	$291	$276	271	211		
Towboats	316	291						+10	−5
Floating Cranes	326	301	266	301				+10	−4
Craneboat *La Valley*	326	301						+20	
Dredge *Las Cruces*	336	311	266	311	276	231	211	+20	−20
Dipper Dredge	336	311	266	311		241		+20	−41
Salvage tug *Favorite*	336	311	266			265			

4. Dredging and Marine Division employees affected who are desirous of ascertaining changes in differentials which have been tentatively approved may obtain this information from any of the following sources:

Marine Superintendent
Superintendent, Dredging Division
Bureau of Statistics, Executive Dept.
Labor Member, Wage Board

5. File reference: 2–D–61/S; memorandum of Major Wheeler, March 25, 1930, with accompanying tabulation; and various memoranda attached thereto.

(Signed) C. A. McIlvaine,
C. A. McIlvaine,
Executive Secretary.

CC—Dredging Division (6)
Marine Division (4)
Personnel Bureau (2)
Bur. Statistics (2)
Accounting Dept. (2)
Supv. Rollkeeper (1)
Mr. McConaughey (10)
Washington Office (2)
Files.

95 *Exhibit D to stipulation*

THE PANAMA CANAL

CANAL ZONE

Executive Department

UNITED STATES OF AMERICA,
Canal Zone, ss:

I, F. H. Wang, Executive Secretary of The Panama Canal, do hereby certify that I am the custodian of the official records and documents of The Panama Canal, and that the excerpts appearing on the document hereto attached are true and correct copies of the Panama Canal Personnel Regulations which are on file in the Executive Office of The Panama Canal.

In witness whereof I have hereunto set my hand and affixed the Seal of the Government of the Canal Zone this 5th day of March 1941.

F. H. WANG.
F. H. Wang,
Executive Secretary.

96 *Excerpts from Panama Canal personnel regulations*

Issued by Governor, The Panama Canal, March 1, 1928

43.1. Hours of service.—Office hours and hours of labor will be fixed by the Governor within the limits prescribed by law. Variations in hours of work must depend on the exigencies of the service, but as far as possible, these hours must be regular and not subject to change from time to time arbitrarily at the discretion of officials and employees in supervisory capacities.

* * * * *

43.5. Monthly employees.—Employees whose salaries are fixed on a monthly or annual basis will be employed ordinarily 7 hours a day if regularly engaged in office work and 8 hours a day if engaged on outside, maintenance, construction, or shop work, but they will receive no pay for overtime work.

* * * * *

48.2. Recuperative time for monthly employees working irregular hours.—In case a monthly employee, regularly employed in the daytime, works at night, he may be allowed time off the following day if needed for rest or recuperation without having the time charged against his leave.

48.3. Relief time for Sunday and holiday work.—A monthly employee who works regularly and is required to work on a Sunday or holiday may be granted relief time for such service by the head of his department or division when it is practicable to do so without detriment to the work or incurring additional expense, but the granting of such time is not a vested right. When such time is allowed to an employee whose rate of pay is computed on a 28-day month, it shall be granted on a basis of 28 days service each month except that during the month of February he may be granted two days off. This does not apply to employees engaged on certain classes of work for which special rules for allowing relief time have been approved by the Governor.

48.4. Relief time not cumulative.—Relief time is not cumulative and must be taken as far as possible in the month in which it is earned, or otherwise before the end of the month immediately following. Relief days are for the purpose of breaking long periods of duty and should be granted in such a way as to enable the employee concerned to have a day off about twice a month.

48.5. Sunday, holiday, and overtime work to be avoided.—Department heads should endeavor to avoid any need arising for Sunday or holiday work, as well as overtime, particularly in the case of monthly employees whose pay is not fixed on the basis of regular employment on such days.

48.6. Anticipating relief from continuous service.—When, due to an emergency or other unusual circumstances, continuous duty is required and it is anticipated that no relief time can be granted within a period of 2 months, the situation should be reported to the Executive Office, with the recommendation of the head of the department as to temporary employments to relieve the situation or allowing at a later time such relief days as will be earned during the period.

U. S. GOVERNMENT PRINTING OFFICE: 1944

Supreme Court of the United States

Order allowing certiorari

Filed October 9, 1944

The petition herein for a writ of certiorari to the Court of Claims is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

No. 134

In the Supreme Court of the United States

OCTOBER TERM, 1944

UNITED STATES, PETITIONER

v.

LOUIS TOWNSLEY

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

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In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 134

UNITED STATES, PETITIONER

v.

LOUIS TOWNSLEY

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

The Solicitor General, on behalf of the United States, respectfully prays that a writ of certiorari issue to review the judgment of the Court of Claims in this case.

OPINIONS BELOW

The opinions of the Court of Claims (R. 14–29) have not yet been officially reported.

JURISDICTION

The original judgment of the Court of Claims was entered on October 4, 1943 (R. 3). On March 6, 1944, the Court overruled the Government's motion for a new trial, vacated its order of October 4, 1943, and entered new findings of fact

and conclusions of law (R. 29). The jurisdiction of this Court is invoked under the provisions of Section 3 (b) of the Act of February 13, 1925, as amended by the Act of May 22, 1939.

QUESTIONS PRESENTED

(1) Whether Section 23 of the Act of March 28, 1934, insofar as it provides for overtime compensation for services in excess of 40 hours per week, applies to Government employees whose compensation is fixed on a monthly basis.

(2) If the foregoing question is answered in the affirmative, whether the Court of Claims employed the proper method for determining the daily rate upon which overtime compensation is to be calculated.

STATUTES INVOLVED

Section 23 of the Act of March 28, 1934, c. 102, 48 Stat. 522 (5 U. S. C. 673c) provides:

> The weekly compensation, minus any general percentage reduction which may be prescribed by Act of Congress, for the several trades and occupations, which is set by wage boards or other wage-fixing authorities, shall be reestablished and maintained at rates not lower than necessary to restore the full weekly earnings of such employees in accordance with the full-time weekly earnings under the respective wage schedules in effect on June 1, 1932: *Provided*, That the regular hours of labor shall

not be more than forty per week; and all overtime shall be compensated for at the rate of not less than time and one half.

Section 6 of the Act of June 30, 1906, c. 3914, 34 Stat. 763 (5 U. S. C. 84) provides:

> Hereafter, where the compensation of any person in the service of the United States is annual or monthly the following rules for division of time and computation of pay for services rendered are hereby established: Annual compensation shall be divided into twelve equal installments, one of which shall be the pay for each calendar month; and in making payments for a fractional part of a month one thirtieth of one of such installments, or of a monthly compensation, shall be the daily rate of pay. For the purpose of computing such compensation and for computing time for services rendered during a fractional part of a month in connection with annual or monthly compensation, each and every month shall be held to consist of thirty days, without regard to the actual number of days in any calendar month, thus excluding the thirty-first of any calendar month, from the computation and treating February as if it actually had thirty days. Any person entering the service of the United States during a thirty-one day month and serving until the end thereof shall be entitled to pay for that month from the date of entry to the 30th day of said month, both days inclusive; and any person entering said

service during the month of February and serving until the end thereof shall be entitled to one month's pay, less as many thirtieths thereof as there were days elapsed prior to date of entry: *Provided*, That for one day's unauthorized absence on the thirty-first day of any calendar month one day's pay shall be forfeited.

STATEMENT

Respondent, an employee of the Panama Canal (an instrumentality of the United States) brought suit on March 14, 1940, in the Court of Claims, claiming that he was entitled under Section 23 of the Act of March 28, 1934, *supra*, to compensation at the rate of "time and one-half" for all overtime services rendered in excess of 40 hours per week. The undisputed facts, as found by the Court of Claims, are as follows:

Between March 28, 1934, and August 31, 1939, respondent was successively employed as operator, chief operator, and master of the dredge *Las Cruces* which was operated by the Panama Canal (R. 5). His monthly rate of pay was fixed by the Governor of the Canal, pursuant to the recommendation of a wage board (R. 5–6). He worked 8 hours per day and 6 days per week, a total of 48 hours per week (R. 6). Neither respondent nor any other operator similarly employed made any formal demand to be placed on a 40-hour week schedule or to be paid overtime for time worked in excess of 40 hours per week after March

28, 1934.[1] However, immediately before his retirement on August 29, 1939, respondent wrote the Executive Secretary of the Panama Canal that he believed he should have been placed on a 40-hour week and that he proposed to submit a claim to the Court of Claims for overtime compensation for services in excess thereof (R. 13).

Inasmuch as respondent was employed and paid on a monthly basis, the official records of the Canal did not show the hours he actually worked. From data furnished by the timekeeper of the *Las Cruces*, however, the court below made the following computation of the number of days of 8 hours each which respondent had worked in excess of 40 hours a week (R. 13–14):

Period	Position	Monthly Salary	Days
March 28, 1934, to January 6, 1937	Operator	$306	105½
January 7, 1937, to November 30, 1937	Chief Operator	311	45
December 1, 1937, to August 31, 1939	Master	336	84

The court reduced respondent's monthly salary to a daily basis by multiplying the monthly rate by 12, dividing the product by 52 to give the weekly salary, and then dividing that quotient

[1] While the court failed to make any specific finding in this respect, it is undisputed that neither respondent nor any other monthly employee employed by the Panama Canal was paid overtime. This was due to several rulings issued by the Comptroller General shortly after passage of the Act of March 28, 1934, to the effect that monthly employees were not entitled to overtime. 14 Comp. Gen. 156, 164.

by 5 to obtain the daily rate of $14.12, $14.35 and $15.51 a day, respectively (thus computing the salary on the basis of a 5-day, 40-hour week). Combining these calculations, the Court of Claims found that there was due and owing to respondent as overtime pay the sum of $5,157.57, for which it entered judgment on the ground that respondent was entitled to overtime compensation under Section 23 of the 1934 Act. (R. 13–14.) Judge Whitaker dissented on the ground that Section 23 was not to be construed as applicable to monthly employees.

SPECIFICATION OF ERRORS TO BE URGED

The Court of Claims erred:

(1) In holding that Section 23 of the Act was applicable to employees paid on a monthly basis.

(2) In holding that respondent was entitled to overtime compensation under Section 23 of the 1934 Act for services rendered in excess of 40 hours per week.

(3) In determining the daily rate of pay, for the purpose of computing overtime compensation, by dividing the annual salary by 52 and then dividing the quotient by 5, instead of dividing the monthly rate of pay by 30.

(4) In entering judgment for respondent.

REASONS FOR GRANTING THE WRIT

The court below held that respondent came within Section 23 of the Act of March 28, 1934,

and hence was entitled to overtime compensation for services in excess of 40 hours a week because his compensation was set by a wage board or other wage-fixing authority, even though he was employed and paid upon a monthly basis. We submit that in so holding the court below has construed the Act in a manner inconsistent with its background and purpose, its legislative history, and the uninterrupted administrative practice under it. We further submit that the method employed by the court below to ascertain the daily base-pay rate, upon which overtime compensation was computed, was improper and in conflict with the provisions of the Act of June 30, 1906, *supra*, pp. 3–4.

(1) *Section 23 of the Act of March 28, 1934, does not apply to employees whose compensation is fixed on a monthly or annual basis.*—(a) Title II of the Act of March 28, 1934 (the Independent Offices Appropriation Act, 1935) amended various "economy" statutes which had reduced the salaries of Federal employees. Section 23 of the 1934 Act (*supra*, pp. 2–3) requires that the "weekly compensation" set by wage boards for the several trades and occupations, minus any general percentage reduction prescribed by Congress, "shall be reestablished and maintained at rates not lower than necessary to restore the full weekly earnings of such employees in accordance with the full-time weekly earnings" under wage

schedules in effect on June 1, 1932. The proviso to Section 23 prescribes a regular work week of not more than 40 hours, and requires that compensation be paid for overtime "at the rate of not less than time and one half."

The term "weekly compensation" has been employed by Congress only in relation to Government employees who are paid by the hour or the day. Cf. Section 101 (a) of the Act of June 30, 1932, 47 Stat. 399; the Act of June 26, 1936, 49 Stat. 1969. The weekly compensation of such employees is of course readily ascertainable, but the compensation of monthly and annual employees is not calculated on a weekly basis; and there is no statutory authority to do so. 12 Comp. Gen. 11, 14; 12 Comp. Gen. 204, 206; cf. Comp. Gen. B–40532, March 18, 1944. The Act of June 30, 1906 (*supra*, pp. 3–4) prescribes the method by which the daily compensation of a monthly or per annum employee is to be calculated, but there is no statutory procedure for determining a uniform weekly rate for such employees.[2] This

[2] Indeed, the 1906 Act prescribes a method of determining a daily rate which would not permit of accurate determination of a weekly rate. In his opinion of March 18, 1944, to the Secretary of War (B–40532), the Comptroller General ruled that there is no authority for calculating the pay of a monthly or annual employee on a weekly basis. He stated:

"To determine the daily rate of a per annum salary of War Department employees there is no authority under existing law to divide the annual salary on any basis other than that specifically provided by the act of June 30, 1906, 34 Stat. 763 (5 U. S. Code 84), that is, into 12 equal installments, one of

would indicate that the draftsmen of Section 23 did not intend that its provisions should apply to annual or monthly employees.

The demarcation established by Congress between hourly and daily employees, on the one hand, and monthly and annual employees, on the other, is wholly reasonable and not without legislative precedent. Hourly and daily employees customarily receive extra compensation for overtime services, while annual and monthly employees do

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which shall be the pay for each calendar month, each of the 12 installments (or monthly compensation) to be divided by 30 to determine the daily rate, or a division of the annual rate by 360 to determine the daily rate. There is no authority of law to compute and to make payments for any fractional part of each calendar month of the year regardless of the number of days therein—whether such payments be made weekly or biweekly—on any basis other than that specifically prescribed by said statute. Hence, the annual rate may not be divided into 52 equal installments. Neither may adjustments be made at the end of the year, nor may the annual salary be divided by 365 (or 366) to determine the daily rate. The amount of each week's compensation depends upon the number of calendar days (of the year) in the week for which a day's compensation (1/360) of the annual rate is payable, the thirtieth and thirty-first of a 31-day month to be regarded as one day, February 28, in other than leap years, to be regarded as 3 days, and February 29, in leap years, to be regarded as 2 days. For instance, the pay for the week ending Saturday, March 4, 1944 (containing February 29) would differ from the pay for the week ending March 11, 1944. Likewise, the pay for the week ending Saturday April 1, 1944 (including March 31) would differ from the pay for the week ending April 8, 1944, as the pay for any week which includes the thirty-first day of a month would be less than the pay for any week that does not include the thirty-first day of a month."

not normally receive extra compensation for overtime. Act of March 15, 1898, c. 68, 30 Stat. 277, 316 (5 U. S. C. 29); Mayers, *The Federal Service*, pp. 519–521. This difference in treatment between the two classes of employees was recognized and established for the Panama Canal by Sections 11 and 12 of Executive Order No. 1888, promulgated on February 2, 1914.[2]

(b) The legislative history supports the construction of Section 23 as inapplicable to employees paid on an annual or monthly basis. As the court below observed (R. 18), this provision was the result of the testimony and efforts of N. P. Alifas, a representative of the Metal Trades' Department of the American Federation of Labor. At the Hearings before the Subcommittee of the Senate Committee on Appropriations on the bill which became the 1934 Act (H. R. 6663, 73d Cong.,

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[2] Section 11. Employees whose salaries are fixed on a monthly or annual basis will receive no pay for overtime work.

Section 12. Employees above the grade of laborer, appointed with rates of pay per hour or per day, will not be employed over eight hours in any one calendar day, except in case of emergency. The time such employees work over eight hours in one calendar day, and time worked on Sundays and regularly authorized holidays, including January 1st, February 22d, May 30th, July 4th, Labor Day, Thanksgiving Day, and December 25th, shall be considered overtime for which time and one-half will be allowed. Such employees who work on the days prior and subsequent to the holidays specifically named above will be allowed their regular pay for eight hours for such days, in addition to pay for any work performed.

2d Sess., pp. 59–61), Mr. Alifas pointed out that while the Economy Act of 1933 imposed a 15% cut upon the compensation of all Federal employees, per diem and hourly employees were having their compensation still further reduced by being furloughed without pay on certain days.[4] He also stressed the fact that per diem and hourly employees had been discharged during the life of the Economy Act of 1933, due "to lack of work and lack of funds," and that upon being reemployed they were paid at a lower rate of pay than they had been receiving. To remedy this claimed discrimination against per diem and hourly employees, he proposed an amendment essentially similar to that which ultimately emerged as Section 23 (see Appendix A, *infra*, pp. 21–25).

The body of Section 23 requires the reestablishment of weekly earnings as of June 1, 1932; the proviso prescribes a 40-hour week with "time-

[4] Section 101 (a) and (b) of the Act of June 30, 1932, provided a regular schedule for reduction of the salaries of employees. Subsection (a) provided that the work of a per diem officer or employee should not exceed 5 days in one week, for which he should be paid $^{10}/_{11}$ of that payable for a week's work of 5½ days. Subsection (b) provided that each officer or employee receiving compensation on an annual basis should be furloughed without compensation for one calendar month. Section 3 of Title II of the Act of March 20, 1933, 48 Stat. 8, 13 (the Economy Act of 1933), provided that in lieu of furloughs without pay there should be substituted a general pay reduction not to exceed 15%. The percentage reductions were gradually reduced until they were abolished in 1935.

and one half" for overtime. Although the legislative history is silent as to the specific reason for the proviso, it discloses that one purpose of Section 23 was "to reduce hours and increase purchasing power," and an analogy was drawn between Section 23 and the N. R. A.—a comparison which would suggest that the benefits were intended only for employees paid on an hourly basis.[5] The requirement of extra compensation was in effect a means of preventing an increase in the work week.[6] At the committee hearings, it was noted also that the compensation of annual employees was not being subjected to similar reductions through furloughs and the like. It may reasonably be assumed,

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[5] The American Federation of Labor representative urged that Congress adopt a policy toward these per diem employees which would be "in conformity with the policy of our Government under the N. R. A., to reduce hours and increase purchasing power." See Appendix A, *infra*, pp. 24–25. In debate on the bill, Senator Cutting also stated that the bill was designed to do "in effect what the N. R. A. is trying to do, to pay the same amount of wages for shorter periods of labor" (78 Cong. Rec. 5574, 73d Cong., 2d Sess.). It has been held that the N. I. R. A. was not designed to increase the compensation of employees "on a straight salary basis," but only of those employees "on an hourly basis." *Steel Products Engineering Co.* v. *United States*, 90 C. Cls. 513, 517.

[6] The proposed amendment submitted by the A. F. of L. representative provided that the reestablishment of wages as of June 1, 1932, was to be "without increasing the present hours of service"—which under the Economy Act of 1933 was a 40-hour week (see Appendix A, *infra*, p. 24).

therefore, that Congress did not intend to provide overtime compensation for employees who were not deemed to need the benefits of Section 23 and who would not be entitled to receive them. Since "the general purpose of the section may be taken into account" in construing the proviso (see *McDonald* v. *United States*, 279 U. S. 12, 22), the scope of that proviso should be regarded as coextensive with that of Section 23, as the court below indeed assumed (see R. 14–27).[7] This conclusion is fortified by the absence of any indication at the committee hearings, in the committee reports, or in the debates, that any legislator believed that under Section 23 overtime compensation was to be accorded to monthly or annual employees, contrary to the long-standing policy followed by Congress in compensating such employees.

(c) The well-established administrative practice is likewise in accord with the construction for which we contend. At least as early as 1883,

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[7] The court's statement that the Governor of the Canal met the economy problem by increasing the hours of those monthly employees who were retained on the roll (R. 20) is without support in the record. Long before the economy legislation, the monthly employees of the Canal had a work week of 48 hours or more. But in computing their monthly salary, consideration was given to this fact. Moreover, their compensation was 25% greater than that paid in continental United States, and their leave privileges—26 days' annual leave, 30 days' cumulative leave and 7 days' travel leave, a total of 63 days—more than offset the extra working time.

Congress provided that annual employees of the executive departments of the Government were not entitled to extra compensation for services rendered in excess of the hours fixed by statute. Act of March 3, 1883, c. 128, 22 Stat. 531, 563; continued by the Act of March 15, 1898, c. 68, sec. 7, 30 Stat. 277, 316 (5 U. S. C. 29). It has consistently been held since that time that annual employees are not entitled to overtime pay for extra work in the absence of a statute specifically providing for extra compensation. 15 Comp. Dec. 620; 25 Comp. Dec. 359; 15 Comp. Gen. 937, 938. And the Comptroller General has repeatedly held that Section 23 is not the type of specific legislation which authorizes payment of overtime to annual and monthly employees. 13 Comp. Gen. 265, 270; 13 Comp. Gen. 277, 280; 14 Comp. Gen. 156, 164. In keeping with these rulings, respondent was at all times employed on the schedule which had been in effect long prior to the enactment of Section 23—a 48-hour week consisting of 6 days of 8 hours each, without additional compensation for the hours in excess of 40 per week. Other Government agencies have also consistently followed the practice of not paying overtime to annual or monthly employees for services in excess of 40 hours per week (see Appendix B, *infra*, pp. 27–31).[8]

[8] On its first motion for a new trial below, the United States submitted certain letters disclosing that the administrative practice of the War and Navy Departments had always been to pay no overtime to monthly or annual em-

(d) This administrative practice was open and well-known, and hence presumably was known to Congress (*Copper Queen Mining Co.* v. *Arizona Board*, 206 U. S. 474, 479; *United States* v. *G. Falk & Brother*, 204 U. S. 143, 150, 152). It was more specifically brought to the attention of Congress in connection with legislation which culminated in the Act of July 9, 1937 (50 Stat. 486), reaffirming the President's authority to fix salary, hours, and other conditions of employment for employees of the Panama Canal. During the consideration of the 1937 Act in Congress, the Canal authorities objected to the proposed incorporation of Section 23 of the 1934 Act. They wrote to the Senate Committee considering the legislation, and noted that Section 23 affected a "special group of employees," only "some 900 out of about 3,000 American employees of Canal." See Appendix C, *infra*, pp. 32–37. With this information before it, Congress inserted in the 1937 Act a

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ployees. The court below commented that neither letter showed that employees had in fact been worked overtime and accordingly declined to consider the matter. Subsequent to the denial of the motion, additional inquiries were directed to the Government Printing Office, the Bureau of Engraving and Printing, the War Department and the Navy Department. Their responses disclosed that monthly and annual employees had been worked in excess of 40 hours a week and that overtime had never been paid them. The United States then filed a second motion for a new trial, submitting these letters with its motion, but the motion was overruled on the same day.

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proviso that nothing contained therein "shall affect the application to employees of the Panama Canal of the provisions of section 23" of the 1934 Act. See 50 Stat. 487. Since Congress could hardly have intended to change the administrative construction "by repeating the very words construed" (*United States* v. *G. Falk & Brother*, 204 U. S. 143, 150), this may fairly be taken as Congressional ratification of the administrative practice.

Subsequent legislation even more clearly affirmed the administrative interpretation of Section 23. Commencing in 1936, a series of overtime acts were adopted which culminated in the War Overtime Pay Act of May 7, 1943 (Public No. 49, 78th Cong., 1st Sess., approved May 7, 1943). The earlier of these enactments merely provided for overtime compensation to annual and monthly employees, both within and without the Classification Act of 1923, including those whose compensation was fixed by a wage-fixing authority (see Appendix D, pp. 38–43). The later statutes (Joint Resolution of December 22, 1942, and the War Overtime Pay Act of 1943) specifically provided overtime compensation for persons "whose wages are fixed on a monthly or yearly basis and adjusted from time to time in accordance with prevailing rates by wage boards", and with equal explicitness excepted from the operation of the overtime provision "employees whose wages are fixed on a daily or hourly basis and adjusted from

time to time in accordance with prevailing rates by wage boards". See Appendix D, *infra*, pp. 44–45. The legislative history shows that this exclusion was based upon the understanding of Congress that overtime compensation for the latter class was already provided for (by Section 23 of the Act of March 28, 1934), but was not yet provided for with respect to monthly and annual employees. See Appendix D, *infra*, pp. 38–45.

Such "subsequent legislation may be considered to assist in the interpretation of prior legislation upon the same subject." *Great Northern Ry. Co.* v. *United States*, 315 U. S. 262, 277; *Tiger* v. *Western Investment Co.*, 221 U. S. 286, 309; cf. *United States* v. *Hutcheson*, 312 U. S. 219. For when Congress, acting over a period of years, passes a series of statutes dealing with the same subject matter, the acts are to be construed in their historic setting as segments of an integrated whole. Viewed from this perspective, a statute derives meaning from later as well as earlier enactments. Many provisions of the overtime statutes enacted between 1936 and 1943 become virtually meaningless if Section 23 of the 1934 Act is to be construed as having already provided overtime compensation for monthly and annual employees whose salary was fixed by a wage board.[9]

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[9] Both the Joint Resolution of December 22, 1942, and the War Overtime Pay Act of 1943 fix overtime pay for monthly and annual employees by computing the daily rate as 1/360

(2) *The method of computing overtime compensation employed by the court below was incorrect.*—Assuming that respondent was entitled to overtime pay for services in excess of 40 hours a week, we submit that the method used by the court below to compute respondent's daily pay was incorrect. The court multiplied respondent's monthly salary by 12 and divided the product by 52 to determine his salary for a 40-hour week; then divided his weekly salary by 5 to ascertain his daily pay for an 8-hour day. (One and one-half times this daily pay then represented one day's overtime compensation.) There is admittedly no statutory authorization for this system of computation. The Government contended below, citing settled administrative practice and the Emergency and War Overtime Acts (Appendix D, *infra*, pp. 44–45), that the proper manner of

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of the employee's annual pay. This formula is substantially less advantageous to the employee than that provided in Section 23 of the 1934 Act. The resulting discrimination between monthly and annual employees under the 1943 Act and per diem and hourly employees under Section 23 of the 1934 Act was called to the attention of Congress but nevertheless adopted despite efforts to amend the bill to provide overtime payment for all on the more liberal basis. See Appendix D, *infra*, p. 45. If the monthly and annual employees expressly included in the 1943 Act already were entitled to overtime pay under the more liberal provisions of Section 23 of the 1934 Act, they would have been excluded from the 1943 Act together with the per diem and hourly employees who are admittedly entitled to overtime pay under Section 23.

computing the daily pay for monthly or annual employees was to divide their monthly pay by 30. The court below rejected this mode of computation on the ground that a statutory method of overtime enacted in 1940 should not control compensation under a 1934 statute. In so holding the court failed to observe the administrative practice, and failed to construe the overtime statutes as being in *pari materia*.

The decision below also does not give effect to the Act of June 30, 1906, *supra*, pp. 3–4. While not called to the attention of the court below, that Act renders the method of computation adopted below clearly erroneous. The 1906 Act expressly provides that where the compensation of a Federal employee is on a monthly basis, his daily pay is to be ascertained by dividing the monthly pay by 30. See *supra*, p. 3; 20 Comp. Dec. 772. The method of calculation followed by the court below resulted in a daily salary rate more than one-third higher than the rate derived from the proper mode of computation.

(3) *The question is one of importance.*—The decision below, if allowed to stand, will impose a considerable [redacted] financial and litigation burden upon the Government. Almost a hundred cases have already been filed with the court below by employees of the Panama Canal, seeking a total recovery which under the decision below would approximate almost a million dollars. We are

advised by the Panama Canal authorities that over a thousand additional claims involving many millions of dollars will likely be filed. Moreover, the implications of the decision below extend to monthly and annual employees of the War and Navy Departments, the Bureau of Engraving and Printing and the Government Printing Office whose compensation is fixed by wage boards but who have been required to work in excess of 40 hours a week without receiving overtime compensation. See Appendix B, *infra*, pp. 27–31.

In view of the substantial doubts as to the correctness of the decision below, as well as its manifest importance, we submit that the question warrants review by this Court.

CONCLUSION

For the reasons stated, it is respectfully submitted that this petition should be granted.

CHARLES FAHY,
Solicitor General.

JUNE 1944.

APPENDIX A

Hearings Before the Subcommittee of the Senate Committee on Appropriations, on H. R. 6663 (73rd Cong., 2d Sess.), pp. 59–61. [All italics supplied.]

JANUARY 17, 1934.

Statement submitted by N. P. Alifas, President District No. 44, International Association of Machinists, and representing the Metal Trades' Department of the American Federation of Labor.

On behalf of the 75,000 or more *per diem mechanics and workmen* employed at the navy yards, arsenals, *the Panama Canal Zone,* and numerous other divisions of the Federal service, whose wages are set by wage boards or similar wage-fixing authorities, I desire to urge your committee to eliminate from the economy section of the independent offices appropriation bill now under consideration all items which reduce the pay of *these employees;* and to repeal all those sections of current economy legislation which reduces pay.

Among the items referred to, are the 15-percent congressional cut which expires on June 30, 1934; the prohibition against automatic and administrative promotions which seriously adversely affect our apprentices and employees who have been reemployed at the same trade at lower rates of pay; and furloughs.

In addition to the loss of the 15-percent congressional cut, the navy-yard employees in particular have had their hours reduced

to an average of 40 per week, by making every alternate Monday a nonwork day without pay. *This furlough* has practically become the permanent policy of the Navy Department, and *results in a permanent reduction of over 22 percent in the base pay of these employees.*

During the life of the current economy legislation, thousands of mechanics and workmen who received the first-class rate of pay, were discharged due to lack of work and lack of funds, and upon being reemployed, were accorded only the second- or third-class rate. In many trades approximately one-third of the men were returned to work at the third-class rate, *which in the case of a mechanic whose base rate is 88 cents per hour, results for that class of workmen in a total reduction in pay of 30.9 percent, while other divisions of the Federal service were suffering only a reduction of 15 percent.*

During the last session of the Seventy-second Congress, President Hoover recommended the reconvening of wage boards with the understanding that mechanics and other workmen coming under them should be reduced 30 percent. Congress declined, and very properly, to cut these employees to any greater extent than the cut imposed on other employees.

During the last session of the present Congress this group of employees was again saved by Congress from a more serious cut than others sustained; and they were limited to 15 percent, the same as others.

Notwithstanding this determined attitude upon the part of Congress to place all Government employees, officers, and officials *upon an equality as to pay cuts, administrative measures* have since then been taken

to *impose an additional 7-percent cut on all navy-yard employees by cutting the hours without a corresponding increase in pay,* and an additional 15.9 percent cut to a very large proportion of them, by reemploying them at lower rates of pay.

In addition to these more or less permanent reductions in pay for per diem employees, thousands of them have been furloughed without pay for protracted periods; and in some instances they have been furloughed for one-third of the time for an entire year, involving a reduction in pay of 43 percent.

In the navy-yard service a splendid 4-year apprenticeship system exists. Each apprentice is required to pass an examination annually for the purpose of disclosing his increased knowledge of the trade and his progress in the apprenticeship school. If he passes the examination, he is advanced to a higher grade, and his pay is increased. The economy law, prohibiting promotions, has barred these apprentices from just compensation as workmen. This should be restored to them.

In like manner, under our efficiency system, employees are presumed to be promoted to higher rates of pay in accordance with their improved efficiency. This, too, has been elimnated by the prohibition against administrative promotions.

In the event your committee decides to eliminate the entire 15-percent pay cut, it is respectfully suggested that language be inserted in lieu of what is now carried in the bill *which will protect these employees against wage cuts by wage boards* which, it is presumed, will be immediately convened in the event Congress eliminates the pay cut.

The following language we believe would serve this purpose:

"*Provided*, That the rates of compensation for the several trades and occupations, which are set by wage boards or other wage-fixing authorities, shall be reestablished and maintained at rates not lower than the respective wage schedules in effect on June 1, 1932; and that the Navy Department and other departments and independent establishments of the Government are hereby directed to restore to employees any reduction in pay which they have received since June 30, 1932, in addition to the 15 percent congressional cut, without increasing the present hours of service; and that the respective departments and independent offices are hereby authorized to incur such deficiencies as may be necessary to put this provision into effect."

It will be noted that the proposed amendment above quoted, establishes the present basic-wage schedules as the minimum, making it possible for wage boards to grant increases beyond this point. This feature does not give these employees any special advantage above what they have had heretofore. We feel that the administrative officials of the departments, in conformity with their past practices, will not be more generous than the law required. While in some divisions of the service, administrative officials grant increases to the limit of their authority, this does not appear to be true in our division of the service, which we maintain requires protection only against unfair administrative reductions in pay.

In view of the prospective increase in the cost of living, and in conformity with the policy of our Government under the

N. R. A., to reduce hours and increase purchasing power, we respectfully submit that the request here made is exceedingly moderate. The fear we entertain that wage boards, if convened, will cut wages is by no means based upon the belief that such reduction in pay would be justified; but such economies we fear are likely to be effected as means by which departments may balance their budget, by subjecting these mechanics and laborers to sustain the burden of such economies.

In a general way, it might be said that all wages and salaries of Government employees and officials were originally based upon the approximate pay which such individuals would receive in private life. *Unfortunately, the wage boards under the law would be compelled to put any reduction in the prevailing rate into effect for the per diem employees;* while at the same time, it might be found that a similar reduction in pay in private industry would be shown for other salaried officers and employees, if they were subjected to a wage survey. *In view of the fact that Congress has decided that other officials, officers, and employees should be treated alike in the matter of wage cuts and, we hope, in the matter of wage restoration, there is no good reason why a special group of employees, the per diem employees in this instance, should be subjected to any greater cut or any greater limitation in restoration of their pay than other officials, officers, and employees of the Government.*

We trust that your committee will keep the interests of these highly skilled mechanics and workers in mind, in reaching your decision regarding the economy features of the bill.

The Senate Committee on Appropriations reported H. R. 6663 on February 12, 1934, without the amendment suggested by the American Federation of Labor (S. Rept. No. 294, 73d Cong., 2d Sess.). However, on February 21, 1934, Senator Thomas of Oklahoma successfully offered an amendment to the bill on the floor of the Senate, and this amendment became Section 23 without change. 78 Cong. Rec. 2977 (73d Cong., 2d Sess.). In sponsoring his amendment, Senator Thomas made a statement which was very similar to that submitted at the hearings on the bill by the American Federation of Labor representative (78 Cong. Rec. 2977):

> Mr. Thomas of Oklahoma. Mr. President, this amendment is offered to help the employees in the navy yards, the arsenals, the Panama Canal Zone, the Government Printing Office, and the Bureau of Engraving and Printing. It simply proposes to put them back on the same status they occupied in July of 1932.
>
> * * * * *
>
> Mr. Thomas of Oklahoma. Mr. President, the amendment adopted this afternoon restores their pay cut, it is true, provided that amendment remains in the law. This amendment proposes to give the employees of these several bureaus an increase in their pay even though they do not have to work an increased number of hours. At the present time they work 40 hours and get 44 hours' pay. Under the amendment it is possible that the board that has control of these employees will let them work 40 hours and they will possibly get 48 hours' pay, provided they get an increase of their hourly pay.

APPENDIX B

UNITED STATES GOVERNMENT PRINTING OFFICE,
Washington 25, D. C., March 22, 1944.

The ATTORNEY GENERAL,
Department of Justice,
Washington 25, D. C.

DEAR SIR: There has been received your letter dated March 20, 1944, (File—FMS:JRW C. Cls. #45097) in which desire is expressed for this office to furnish information in reply to questions stated.

The questions are answered in the order presented as follows:

(1) The Government Printing Office has employees hired and paid on an annual basis whose compensation is fixed by wage boards or other wage fixing authorities since March 28, 1934.

(2) Such employees have been directed to work and have worked in excess of 40 hours per week since the effective date of the statute.

(3) Such employees have not been paid overtime compensation for work in excess of 40 hours per week pursuant of the provisions of the statute that "All overtime should be compensated for at the rate of not less than time and one-half". The reason for such action is contained in a decision of the Comptroller General of the United States (13 CG 265) which states in part, that employees paid on an annual

basis who may be required to work more than 40 hours per week are not entitled to overtime.

Very truly yours,

A. E. GIEGENGACK,
Public Printer.

By (Signed) F. E. CRISTOFANE,
Comptroller.

TREASURY DEPARTMENT,
BUREAU OF ENGRAVING AND PRINTING,
Washington 25, D. C., March 22, 1944.

Honorable FRANCIS M. SHEA,
Assistant Attorney General,
Washington 25, D. C.

MY DEAR MR. SHEA: Receipt is acknowledged of your letter of March 20, 1944, regarding the matter of overtime pay for work in excess of 40 hours per week with respect to employees paid on a monthly or annual basis whose compensation is fixed by wage boards or other wage-fixing authorities.

In reply to the questions contained in your letter, you are advised that this bureau had on March 28, 1934, and until August 1, 1942, a number of employees in the service whose compensation was fixed by a wage-fixing authority and who were paid on an annual basis. Some of these employees were, on occasion, required to work more than 40 hours per week. However, in no instance were any of these per annum employees paid time-and-a-half for such overtime.

Very truly yours,

(Signed) A. W. HALL,
Director.

NAVY DEPARTMENT,
Washington, D. C., April 4, 1944.

CHIEF OF OFFICE,
Panama Canal, Washington, D. C.

DEAR SIR: Reference is made to your letter of March 21, 1944, requesting that you be advised whether or not civilian employees of the Navy Department whose wages are fixed by "wage boards or other wage-fixing authorities" on a monthly or per annum basis have been required to work in excess of forty hours per week after the date of the enactment of Section 23 of the Independent Offices Appropriation Act of 1935 (March 28, 1934), and if so, whether any overtime compensation has been paid to such employees under the provisions of that section.

The civilian employees of the Navy Department referred to above have been required to work in excess of forty hours per week after the date of the enactment of the cited statute and no overtime compensation has been paid to such employees under the provisions of that statute.

Very sincerely,

RALPH A. BARD.

WAR DEPARTMENT,
Washington, April 8, 1944.

MR. B. F. BURDICK,
Chief of Office, The Panama Canal,
Washington 25, D. C.

DEAR MR. BURDICK: This is in reply to your letter of March 21, 1944, in which you request additional information regarding the payment of overtime compensation to monthly and per annum employees under the Act of March 29, 1934.

In view of the fact that your office has indicated a desire for an early reply in this matter, it has not been possible to gather complete and adequate information from the operating elements of the War Department. It can be stated, however, that this Department has never adopted the practice of paying overtime compensation under the 1934 law to any employees other than those paid on a daily or hourly basis. It is also true that employees paid on a per annum or monthly basis whose rates of compensation were not fixed in accordance with the Classification Act of 1923, as amended, have been required to work in excess of 40 hours per week. In the period immediately preceding the entry of the United States into the present war, it was a general practice to require ungraded employees, not covered by the Act of March 28, 1934, to work five and one-half days per week or a total of 44 hours per week. Effective January 9, 1942, the Department adopted a 48 hour week and ungraded employees paid on a per annum basis have, since that date, worked six eight-hour days.

In this connection, however, it is felt that a consideration is involved which was not brought out in the decision of the Court of Claims to which you refer. Although this Department was, of course, influenced by the decision of the Comptroller General, holding that per annum employees were not entitled to overtime under the law in question, the further matter of wage board procedure was also involved. In a number of instances, the Comptroller held that the wage fixing procedure followed by the Air Corps, the Engi-

neer Department, and other elements of this Department did not meet the statutory requirement of "wage boards or other wage-fixing authorities" (see Comp. Gen. 486; 14 *id.* 552). In view of the above, it would appear that the War Department is in a different position from your organization with respect to the decision in the *Townsley* case, inasmuch as the wage fixing practice has been held not to meet the statutory requirement. It was not until the early part of 1943 that a general and formal wage board procedure was adopted for ungraded employees as a whole.

If the Department can be of further assistance to you in securing more detailed and specific data from the Forces and Technical Services, please be assured of our complete willingness to do so.

Sincerely yours,

(Signed) JOHN W. MARTYN,
Administrative Assistant.

APPENDIX C

THE PANAMA CANAL,
WASHINGTON OFFICE,
Washington, June 11, 1935.

Honorable THOMAS P. GORE,
Chairman, Committee on Interoceanic Canals,
United States Senate,
Washington, D. C.

MY DEAR SENATOR GORE: Governor Schley has informed this office by radio that he has learned that effort may be made to secure an amendment to Section 2 of bill H. R. 6719 "To amend the Canal Zone Code", which would have the effect of incorporating into the Canal Zone Code the 40-hour week provision of the so-called Thomas amendment to the Independent Offices Appropriation Act for 1935 (48 Stat. 522).

The Governor is very much opposed to any such amendment to the bill as it passed the House for the reason, as he states, such an amendment would place a wholly inconsistent restriction on the general power of the President to fix the conditions of employment for all employees of The Panama Canal by granting entirely unjustified treatment to a certain group of employees which would be highly discriminatory.

The following explanation of the purpose of Section 2 of H. R. 6719, and the reasons why it is considered undesirable to permit the making of any amendment thereto, are stated in a letter

which the Governor sent to Congressman Bland, Chairman of the Committee on Merchant Marine and Fisheries of the House, as follows:

> The purpose of section 2 of H. R. 6719 is to confirm the general authority which has always been exercised by the President in the matter of fixing the salaries and conditions of employment of the personnel of the Canal organization within the limits prescribed by Congress. The proposed legislation was made necessary by a recent ruling of the Comptroller General denying the power of the President, in the absence of specific statutory authority, to establish rules governing the commutation of leave of certain employees. The proposed section is designed to cover specifically all those matters relating to conditions of employment with respect to which it may fairly be assumed that the Comptroller General might rule similarly.
>
> It is my opinion that it would be entirely inconsistent in confirming the general authority of the President for fixing the conditions of employment of Canal personnel to impose such a restrictive provision as that embodied in the Thomas Amendment. Particularly does this seem to be true when it is considered that the Thomas Amendment is general legislation of the United States which is not applicable to American employees of the Canal generally and affects only a certain number of employees in particular groups solely by reason of a ruling to that effect by the Comptroller General. Furthermore, it freezes the salaries as well as the hours of work of the particular employees to which it applies, which is of course inconsistent with the general purpose of the proposed legislation.

It should be noted that the enactment of section 2 of H. R. 6719 will not revoke the provisions of the Thomas Amendment. It will, however, leave it within the discretion of the President to determine the working hours of all employees of The Panama Canal; and the President might, if he so desired, establish a 40-, 44-, or 48-hour week for all employees of The Panama Canal if he considers it advisable to do so. In the absence of affirmative action by the President, however, no changes in working hours would be made. It is important that the hours of work among the several classes of Americans on the Canal Zone be coordinated and that of course can best be done here where all conditions are known, but it is more important that general legislation for the United States be applied only with great care to the Panama Canal because of the many special conditions of employment here. For instance, the limitation to 40 hours of work per week has been extended to men here who already had very generous annual vacation allowances necessary in this climate to permit trips to a temperate climate for recuperation, with the result that our 40-hour men work only about 1,717 hours per year on the average as compared to 1,857 hours for Government men enjoying the 40-hour week in the United States.

It is very desirable to have this bill passed before July 1st, which is the date beyond which the Comptroller General has stated he is not willing to permit the making of commuted leave payments without additional legislative authority.

In his radio of this date the Governor requested th. office "to endeavor to persuade Senator Gore to secure most expeditious consideration of bill." Early action on this bill is very much desired. There are no controversial matters contained in the bill and its purposes are fully explained in House Report No. 744.

Very respectfully,

A. L. FLINT,
Chief of Office.

THE PANAMA CANAL,
WASHINGTON OFFICE,
Washington, April 16, 1936.

Honorable F. RYAN DUFFY,
United States Senate, Washington, D. C.

MY DEAR SENATOR DUFFY: Supplementing the radiogram of April 13, 1936, from the Governor of The Panama Canal, relative to H. R. 6719, to amend the Canal Zone Code, quoted in my letter to you under date of April 14, 1936, there is quoted below another radiogram from the Governor, dated April 15, 1936, on this subject, which the Governor has requested be transmitted to you:

> Delegation from Panama Metal Trades Council called on me yesterday and requested assurance that Section 2 of H. R. 6719 if enacted would not be interpreted by me as having adverse effect on continuance of 40-hour week for mechanical trades which was brought about by application of so-called Thomas Amendment, Section 23 of Independent Offices Act of 1935,

to some 900 out of about 3,000 American employees of Canal.

Delegation was informed that I could not at this time commit Canal Administration concerning administrative questions which might arise if Bland Bill were enacted but that the long record of successive Canal administrations for fair dealing in employee relations should make it unnecessary for Governor to state specifically what action would be taken in particular contingencies which might arise in future. General policy has been and will continue to be to take generous view with reference to justifiable special employment privileges as necessary compensation for special conditions arising out of service in tropics with Panama Canal. Fixed policy also is to keep abreast of policies of national administration in all matters relating to improved employment conditions for Government workers.

Meeting of Metal Trades Council last night decided to send Wahl as legislative representative to Washington to secure amendment to H. R. 6719 which would have effect of incorporating Thomas Amendment in Canal Zone Code. If desired amendment cannot be secured it is intimated that efforts will be made by Metal Trades to defeat consideration of bill in present session.

Section 2 of the bill was drafted at my direction after the Comptroller General had held that accumulated leave of Canal employees might not be commuted into cash after June 30th, 1935 and unusual efforts were made by me to secure the enactment of this provision prior to July 1st, 1935 so that no employees whose services were terminated might be deprived of privilege of

having his leave commuted into cash. The section was drafted in broad terms so that there would remain no doubt of the validity of other regulations of the President granting important privileges to Canal employees because of service in tropics.

I should consider it most unfortunate if the application of the Thomas Amendment to a selected group of Canal employees should be incorporated in the bill as an amendment to section of Canal Zone Code which is designed to apply to all employees. The authority with which H. R. 6719 vests the President is precisely the authority which has continuously been exercised by him since 1903 and it would be wholly inconsistent to restrict the exercise of this authority as to a special group of employees.

I desire to emphasize that Section 2 of H. R. 6719 will not revoke the provisions of the Thomas Amendment, which is a general law not specifically made applicable to the Canal Zone. Thomas Amendment, regardless of regulations which may be made by President for Canal Zone, will remain in effect in United States and establish conditions of employment for certain Government workers there which will be reflected in conditions of employment prescribed for similar employees of Panama Canal.

Very truly yours,

A. L. FLINT,
Chief of Office.

APPENDIX D

(All Italics Supplied)

1. Act of June 26, 1936.

The Act of June 26, 1936 amended section 23 of the Act of March 28, 1934, by extending the benefit of a 40-hour week to employees who were hired and paid on a hourly or per diem basis under the Classification Act of 1923.

The Bureau of Engraving and Printing was the moving force behind the 1936 Amendment, and pointed out to the House Committee on the Civil Service that section 23 of the Act of March 28, 1934, provided a 40-hour week for employees engaged in mechanical trades who were not covered by the Classification Act of 1923. Hence, such employees were working only 40 hours per week, while other hourly employees covered by the Classification Act of 1923 were working 44 hours per week in accordance with applicable Federal statutes. In order to authorize a 40-hour week for the latter group of employees, while maintaining their weekly compensation, Act of June 26, 1936 (49 Stat. 1969) was enacted, granting authority "to adjust the *hourly rates of compensation* of employees whose compensation is fixed under the Classification Act of 1923, as amended, to such extent as may be necessary to make the aggregate compensation for a forty-hour week equal to the compensation for a full-time week prior to March 28, 1934."

The House Committee explained the purpose of this amendment as follows (H. Rept. No. 2827, 74th Cong., 2d Sess., pp. 1–2):

> Section 23 of the Independent Offices Appropriation Act, 1935, provided a 40-hour week for employees of the Bureau of Engraving and Printing engaged in mechanical trades. This affected 780 of the 4,203 employees, giving them a full week's pay for 40 working hours while the remainder, numbering 3,423, continued to be required to work 44 hours.
>
> This situation constitutes a very difficult administrative problem for the Bureau of Engraving and Printing, making it necessary to continue to operate on a 44-hour week basis and requiring that the working hours for members of the trades be staggered.
>
> The committee feels that in view of the granting of a 40-hour week to the employees engaged in the trades, and the further fact that Congress has extended the 40-hour week to postal employees and others, it is only fair to give the Secretary of the Treasury authority to extend it to the other employees of the Bureau of Engraving and Printing.

2. Act of June 28, 1940.

Section 5 (a) of the Act of June 28, 1940 (54 Stat. 676, 678), which expired June 30, 1942 provided, *inter alia*, that:

> Notwithstanding the provisions of any other law, the regular working hours of the Navy Department and the Coast Guard and their field services shall be eight hours a day or forty hours per week during the period of the national emergency declared by the President on September 8, 1939, to

> exist: * * * *Provided further,* That compensation for employment in excess of forty hours in any administrative workweek computed at a rate not less than one and one-half times the regular rate *shall be paid only to monthly, per diem, hourly, and piece-work employees,* whose wages are set by the Act of July 16, 1862 (12 Stat. 587), as amended or modified; and also to professional and subprofessional employees and to [certain other employees] of the CAF service, as defined by the Classification Act of March 4, 1923 * * *: *Provided further,* That in determining the overtime compensation of per annum Government employees the pay for one day shall be considered to be one three-hundred-and-sixtieth of their respective per annum salaries: * * *.

In its report on the bill (H. R. 9822, 76th Cong., 3d Sess.), the Senate Committee on Naval Affairs stated (S. Rept. No. 1863, pp. 11–12):

> As to compensation, section 5 (a) * * * simply provides that with the establishment of a 40-hour workweek *all* employees in the Navy Department, the Coast Guard and their field services shall receive ***uniform*** treatment in the *payment of compensation for employment in excess of 40 hours* in any administrative work [sic] of 7 days. *In this regard, the provision for the payment of compensation to per annum and per month employees is a departure from the practice heretofore followed.* * * *

The House Committee on Naval Affairs made a similar point in its report on this bill (H. Rept. No. 2257, 76th Cong., 3d Sess., pp. 3–4):

> Overtime pay has heretofore not been allowed to any per annum employees of the Government, although overtime pay at time and one-half is allowed to per diem employees. * * *
>
> In order to calculate the amount of overtime pay for per annum employees it is necessary to specify in the act the corresponding daily pay. This has been done in accordance with long-standing Government custom by fixing it at one three-hundred-and-sixtieth of the annual salary on the customary basis of 12 months to a year and 30 days to a month.

3. *Act of October 21, 1940.*

The Act of October 21, 1940 (54 Stat. 1205), which expired June 30, 1942, provided that:

> * * * notwithstanding the provisions of any other law, compensation for employment in excess of forty hours in any administrative workweek computed at a rate not less than one and one-half times the regular rate is hereby authorized to be paid at such places and *to such monthly*, per diem, hourly, and piecework *employees of* the field services of the War Department and *the field services of the Panama Canal whose wages are set by wage boards or other wage fixing authorities*, and also to professional and subprofessional employees and to [certain other employees] of the CAF service, as defined by the Classification Act of March 4, 1943 * * * *as shall be designated from time to time by* the Secretary of War or *the Governor of the Panama Canal*, as the case may be, * * *: *Provided*, That in determining the overtime compensation

> of the foregoing per annum Government employees the pay for one day shall be considered to be one three-hundred-and-sixtieth of their respective per annum salaries.

The following was said during the debates in the Senate on S. 4208, the underlying bill (86 Cong. Rec. 13421, 76th Cong., 3d Sess.):

> Mr. Danaher. Mr. President, there is no objection whatever to the bill, so far as I now know. I should like to have some member of the committee, however, explain whether or not its provisions would supplement the provisions of other legislation in which we undertook to deal with prevailing rates of labor, and generally dealing with construction items of that sort in the Canal Zone.
>
> Mr. Thomas of Utah. Mr. President, I think the answer to that question is, "Yes," although the word "supplement" is hardly the right word. We have passed a measure providing for an 8-hour day and a 40-hour week for the ordinary workers in Government arsenals and those now doing defense work. Other workers are on an annual wage. In order to make the pay during this time consistent the Senate committee amendment is necessary.

In the House debates on S. 4208, Mr. Ramspeck, of the House Committee on the Civil Service, stated (86 Cong. Rec. 13557):

> The Secretary of War and the Assistant Secretary of War * * * say that they have the legal authority now to pay overtime to certain employees of the War Department in the arsenals and at the Panama

> Canal, but as to others they have not this authority and this creates a bad administrative situation. They have recommended this bill, which has passed the Senate, and it is my understanding we have given the same authority to the Navy Department as to the Navy yards.

4. Act of June 3, 1941.

By the Act of June 3, 1941 (55 Stat. 241), which also expired June 30, 1942, Congress authorized payment of overtime, computed at the rate of one three-hundred-and-sixtieth of the per annum salaries, to annual employees of the field services of the War Department, *the Panama Canal,* the Navy Department, and the Coast Guard engaged in work of the kind described in Section 5 (a) of the Act of June 28, 1940, *supra.*

Senator Reynolds introduced the bill (S. 1541, 77th Cong., 1st Sess.) and quoted from a letter of the War Department of May 19, 1941, as follows (87 Cong. Rec., pp. 4275–4276):

> The bill provides for overtime work in the Field Service of the War Department at the rate of time and one-half for per annum employees.
>
> The bill merely places them on the same basis that laborers and mechanics are now on.
>
> It also gives the War Department power to keep the Field Service employees at work during the time when they would otherwise be on vacation. * * *

See also, H. Rept. No. 593 (77th Cong., 1st Sess.) p. 1, to the same effect.

5. Joint Resolution of Dec. 22, 1942.

The Joint Resolution of December 22, 1942 (56 Stat. 1068, expiring April 30, 1943) provided overtime compensation for monthly and annual employees and excluded from its operation those employees "whose wages are fixed on a daily or hourly basis and adjusted from time to time in accordance with prevailing rates by wage boards or similar administrative authority serving the same purpose".

The Senate Report on this measure stated (S. Rept. No. 1847 on S. J. Res. 170, 77th Cong., 2d Sess., pp. 2–3):

> The joint resolution provides for the extension until April 30, 1943, of the laws authorizing the payment of overtime compensation to per annum employees in the War and Navy Departments, and for the extension of such authority to cover other employees of the Government. *The joint resolution will not affect employees whose compensation is based upon hourly rates fixed and adjusted by wage boards or similar administrative* * * *.
>
> *The overtime compensation payable under the joint resolution* would be computed at the rate of one and one-half times an employee's regular basic rate. For the purposes of such computation the basic rate for 1 day *will be considered to be one three-hundred-and-sixtieth of so much of an employee's annual salary as does not exceed $2,900 per annum.* * * *

6. War Overtime Pay Act of 1943.

Section 1 of the War Overtime Pay Act of 1943 (Pub. No. 49, 78th Cong., 1st Sess., approved May 7, 1943) provides:

> That this Act *shall apply to all civilian officers and employees (including officers and employees whose wages are fixed on a monthly or yearly basis and adjusted from time to time in accordance with prevailing rates by wage boards or similar administrative authority serving the same purpose,* except those in or under the Government Printing Office or the Tennessee Valley Authority) * * * except that this Act *shall not apply to* * * * (c) *employees whose wages are fixed on a daily or hourly basis and adjusted from time to time in accordance with prevailing rates by wage boards or similar administrative authority serving the same purpose;* * * *.

During the consideration of H. R. 1860, the bill which became the 1943 Act, an amendment was offered in the Senate to extend the bill to employees already entitled to overtime compensation under section 23 of the Act of March 28, 1934, and to preclude payment of overtime under section 23. The Senate rejected that amendment (89 Cong. Rec., pp. 3176, 3185).

In presenting the Conference Committee Report on the bill, in the form in which it was subsequently enacted, Mr. Ramspeck stated in the House (89 Cong. Rec., p. 3654):

> This bill is to give additional pay to a million and a half employees of the Government *who are not covered by other pay legislation.*

U. S. GOVERNMENT PRINTING OFFICE 48

No. 134

In the Supreme Court of the United States

OCTOBER TERM, 1944

UNITED STATES, PETITIONER

v.

LOUIS TOWNSLEY

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

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In the Supreme Court of the United States

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No. 134

UNITED STATES, PETITIONER

v.

LOUIS TOWNSLEY

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinions of the Court of Claims (R. 14–29) have not yet been officially reported.

JURISDICTION

The original findings of fact and conclusions of law of the Court of Claims were entered on October 4, 1943 (R. 3). On March 6, 1944, the court overruled the Government's motion for a new trial, vacated its order of October 4, 1943, and entered new findings of fact and conclusions of law (R. 4–14, 29). The petition for a writ of certiorari was filed on June 6, 1944, and was granted on October 9, 1944. The jurisdiction of this Court

rests upon the provisions of Section 3 (b) of the Act of February 13, 1925, as amended by the Act of May 22, 1939.

QUESTIONS PRESENTED

The principal question is whether Section 23 of the Independent Offices Appropriation Act, 1935, in so far as it provides for overtime compensation for services in excess of 40 hours per week, applies to Government employees of the Canal Zone whose compensation is fixed on a monthly basis. If this question is answered in the affirmative, the further question presented is whether the Court of Claims employed the proper method for computing such overtime compensation.

STATUTES INVOLVED

Section 23 of the Independent Offices Appropriation Act, 1935, approved March 28, 1934 (c. 102, 48 Stat. 522, 5 U. S. C. 673c), provides:

> The weekly compensation, minus any general percentage reduction which may be prescribed by Act of Congress, for the several trades and occupations, which is set by wage boards or other wage-fixing authorities, shall be reestablished and maintained at rates not lower than necessary to restore the full weekly earnings of such employees in accordance with the full-time weekly earnings under the respective wage schedules in effect on June 1, 1932: *Provided*, That the regular hours of labor shall not

be more than forty per week; and all overtime shall be compensated for at the rate of not less than time and one half.

Section 6 of the Act of June 30, 1906 (c. 3914, 34 Stat. 763, 5 U. S. C. 84), provides:

> Hereafter, where the compensation of any person in the service of the United States is annual or monthly the following rules for division of time and computation of pay for services rendered are hereby established: Annual compensation shall be divided into twelve equal installments, one of which shall be the pay for each calendar month; and in making payments for a fractional part of a month one thirtieth of one of such installments, or of a monthly compensation, shall be the daily rate of pay. For the purpose of computing such compensation and for computing time for services rendered during a fractional part of a month in connection with annual or monthly compensation, each and every month shall be held to consist of thirty days, without regard to the actual number of days in any calendar month, thus excluding the thirty-first of any calendar month from the computation and treating February as if it actually had thirty days. Any person entering the service of the United States during a thirty-one day month and serving until the end thereof shall be entitled to pay for that month from the date of entry to the thirtieth day of said

month, both days inclusive; and any person entering said service during the month of February and serving until the end thereof shall be entitled to one month's pay, less as many thirtieths thereof as there were days elapsed prior to date of entry: *Provided*, That for one day's unauthorized absence on the thirty-first day of any calendar month one day's pay shall be forfeited.

STATEMENT

On March 14, 1940, the respondent, a former employee of the Panama Canal (an instrumentality of the United States), brought suit in the Court of Claims, claiming that he was entitled, by virtue of Section 23 of the Act of March 28, 1934, *supra*, to compensation at the rate of "time and one-half" for all hours of service in excess of 40 hours per week rendered by him as an employee of the Panama Canal during the period from March 28, 1934, to August 31, 1939. The undisputed facts, as found by the Court of Claims, are as follows:

Between March 28, 1934 and August 31, 1939, the respondent was successively employed as operator, chief operator, and master of the pipeline dredge *Las Cruces* which was operated by the Panama Canal (R. 5). He was paid on a monthly basis at rates which had been fixed by the Governor of the Canal Zone, on recommenda-

tion of a wage board (R. 5–6),[1] for the various positions held by him (R. 66–67).[2]

During this period the dredge *Las Cruces* was engaged in maintaining channels and terminal harbors in the Canal Zone, and regularly operated on a schedule of 24 hours each day, except Sunday, divided into three eight-hour shifts (R. 6). There was occasional Sunday operation of the dredge for

[1] The Act of August 24, 1912 (c. 390, § 4, 37 Stat. 561, 48 U. S. C. 1305) provided that "persons necessary for the completion, care, management, maintenance, sanitation, government, operation, and protection of the Panama Canal and Canal Zone shall be appointed" and their compensation fixed "by the President, or by his authority, until such time as Congress may by law regulate the same, but the salaries or compensation fixed * * * shall in no instance exceed by more than twenty-five per centum the salary or compensation paid for the same or similar services to persons employed by the Government in continental United States." Executive orders fixed the general conditions of employment and delegated all but certain judiciary appointments to the Governor of the Canal Zone. Executive Order No. 1888 of February 2, 1914, as amended by Executive Order No. 2514 of January 15, 1917 (R. 36–46). On April 9, 1919, the Governor created an advisory board (known as the "Board on Rates of Pay—Gold Roll") to advise him on wages for positions filled by employees who were members of the American Federation of Labor (R. 8–9). On March 1, 1928, this Board was changed to a two-man "Wage Board," one appointed by the Governor and one nominated by the Panama Metal Trades Council (A. F. of L.) and approved by the Governor (R. 9–10).

[2] From March 28, 1934, to January 6, 1937, the respondent's monthly compensation as operator was $306. From January 7, 1937, to November 30, 1937, his monthly compensation as chief operator was $311. For the remainder of the claim period, his monthly compensation as master was $336. (R. 5–6.)

the completion of important work or for repairs and replacements, and on such occasions the master arranged for the required force of men and was usually present as supervisor (R. 6). During the term of his successive employment as operator, chief operator, and master, the respondent's normal work week was composed of six eight-hour days, a total of 48 hours per week (R. 6–8). As operator, the respondent was in charge of and responsible for all equipment on the dredge when the master and chief operator were not aboard (R. 8). As chief operator, he was required to stand the regular eight-hour watch as operator, and was acting master during the absence of the master for about two months each year (R. 7). As master, he was subject to call at all times in the event of a major breakdown or other unusual occurrence, and was ordinarily free to leave his work during the day for personal reasons (R. 6–7).

For required overtime work during the claim period, in excess of his regular 48-hour workweek, the respondent was entitled to compensatory time-off in accordance with personnel regulations issued by the Governor (R. 6–7).[3] Neither the respondent nor any other employee of the Canal similarly employed ever made any formal request, after the enactment of the Act of March 28, 1934, to be placed on a 40-hour week schedule or to be

[3] Such compensatory time-off was available only to employees of the Canal Zone paid on a monthly basis (R. 7, 79–80).

paid overtime for services in excess of 40 hours per week (R. 13), even though a well established procedure, with which the respondent was familiar (R. 58), was available for the presentation of rate matters and rate claims to the Wage Board (R. 9, 47, 49, 50–54).[4] Immediately before his retirement, on August 29, 1939, the respondent wrote the Executive Secretary of the Panama Canal that he believed he should have been placed on a 40-hour week, and that he proposed to bring suit in the Court of Claims for overtime compensation for services in excess thereof (R. 13).

Inasmuch as the respondent was employed and paid on a monthly basis during the entire claim period, the official records of the Canal did not disclose the hours he actually worked. From data furnished by the timekeeper of the *Las Cruces*, however, the court below made the following computation of the number of days of eight hours each which the respondent had worked in excess of 40 hours a week (R. 13–14):

Period	Position	Monthly Salary	Days
March 28, 1934, to January 6, 1937	Operator	$306	105½
January 7, 1937, to November 30, 1937	Chief Operator	311	45
December 1, 1937, to August 31, 1939	Master	336	84

[4] While the Court of Claims failed to make any specific finding in this respect, it is undisputed that neither the respondent nor any other monthly employee employed by the Panama Canal was paid overtime. Shortly after passage of the Act of March 28, 1934, the Comptroller General issued several rulings to the effect that such employees

The court below held that for such overtime services the respondent was entitled to compensation at the rate of "time and one-half" under Section 23 of the 1934 Act (R. 14). To compute the salary basis upon which the overtime pay should be determined, the court reduced the respondent's monthly salary to a daily basis by multiplying the monthly rate by 12, dividing the product by 52 to give the weekly salary, and then dividing that quotient by 5 to obtain the daily rate of $14.12, $14.35, and $15.51 a day, respectively, for his three separate positions during the claim period (thus computing the salary on the basis of a 5-day, 40-hour week). Combining these calculations, the court found that there was due to the respondent as overtime pay the sum of $5,157.57, for which it entered judgment in his favor. (R. 13–14.) Judge Whitaker dissented on the ground that Section 23 was not to be construed as applicable to employees whose salary was fixed and paid on a monthly basis (R. 27–29).

SPECIFICATION OF ERRORS TO BE URGED

The Court of Claims erred:

1. In holding that Section 23 of the 1934 Act was applicable to employees paid on a monthly basis.

2. In holding that the respondent was entitled to overtime compensation under Section 23 of the

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were not entitled to overtime under that Act. 13 Comp. Gen. 265, 269, 270; 13 *id.* 280; 14 *id.* 156, 164. The Comptroller General also ruled that Section 23 was not applicable in any respect to employees of the Panama Canal "on floating

1934 Act for services rendered in excess of 40 hours per week.

3. In determining the daily rate of pay, for the purpose of computing overtime compensation, by dividing the annual salary by 52 and then dividing the quotient by 5, instead of dividing the monthly rate of pay by 30.

4. In entering judgment for the respondent.

SUMMARY OF ARGUMENT

The language of Section 23 of the Act of March 28, 1934, its legislative history, the consistent administrative construction placed upon it, and its relation to other legislation dealing with the problem of overtime compensation for Government employees, show that the provision was intended to apply only to employees paid upon an hourly or per diem basis, and that the Court of Claims erred in construing the statute to extend to annual or monthly employees.

I

Section 23 requires that "the weekly compensation * * * for the several trades and occupations, which is set by wage boards or other wage-fixing authorities" shall be established at rates to equal "the full weekly earnings of such employees in accordance with the full-time weekly earnings under the respective wage schedules in effect on June 1, 1932." This provision can readily be ap-

equipment" because their wages were not fixed through wage board procedure. 14 Comp. Gen. 156, 158. For other similar rulings see 13 *id.* 486; 14 *id.* 552.

plied to employees whose wages are fixed on a weekly or per diem basis, since their "weekly compensation" and "weekly earnings" can be computed merely by adding the number of hours or days in the workweek. But serious difficulties arise if Section 23 is sought to be applied to an employee paid on a monthly or annual basis, as it was by the court below. Moreover, the Act of June 30, 1906, prescribing the only statutory formula for estimating the daily pay of monthly and annual employees, does not furnish any guide for reducing such compensation to a weekly rate, and the Comptroller General has consistently ruled that monthly compensation may not be calculated on a weekly basis.

The legislative history of Section 23 reveals a Congressional intention that it should apply to per diem and hourly workers only. Section 23 was intended to remove an inequality between monthly and annual employees, on the one hand, and per diem and hourly employees, on the other. All Government employees had suffered general salary reductions during the depression, and in legislation terminating with the 1934 statute such reductions were gradually eliminated. But because the length of the work week had been somewhat curtailed, per diem and hourly employees received a lesser net wage than they had prior to the reductions, whereas monthly and annual employees had their original earnings restored, since their salaries remained constant regardless of the number of hours worked per week. This

disparity was brought to the attention of Congress by a representative of the American Federation of Labor who submitted a statement on behalf of "the 75,000 or more per diem mechanics and workmen employed at the navy yards, arsenals, the Panama Canal Zone, and numerous other divisions of the federal service, whose wages are set by wage boards or similar wage fixing authorities;" and he proposed a provision which became Section 23 of the Act of March 28, 1934. The relevant legislative materials show that this provision was intended to apply only to employees paid on an hourly or daily basis.

The meaning of Section 23 of the 1934 Act may properly be derived not only from the proceedings in Congress prior to its enactment, but also from the subsequent legislation dealing with the same subject matter. A series of later enactments dealing with overtime compensation for Government employees, and the legislative materials relating to these enactments, show a distinct understanding by Congress that Section 23 of the 1934 Act did not apply to monthly and annual employees whose salary was fixed by wage boards. For example, the Act of June 28, 1940, provided overtime compensation for certain groups of classified and unclassified employees, and the committee reports on the bill noted that this was the first instance of overtime compensation to monthly and annual employees.

Prior to the 1934 Act, the Government consistently treated monthly and annual employees differently from per diem and hourly employees in so far as overtime compensation was concerned; only the latter class received compensation for additional work. Despite the broad powers vested in several Government agencies employing a wage board procedure to fix the compensation of their unclassified employees, overtime compensation was never provided for or paid to monthly or annual employees. This was also true of the Panama Canal. After the 1934 Act, none of these agencies, including the Panama Canal, paid any overtime compensation to monthly or annual employees, either under Section 23 of that Act or otherwise, and it was not until the Act of October 21, 1940, which expressly authorized such payment to monthly employees, that any break occurred in the consistent practice. Such administrative construction of the 1934 Act is entitled to great weight in determining its true meaning.

II

Assuming that Section 23 is applicable to respondent, there was no warrant for the method of computation employed by the court below, consisting of the division of respondent's yearly earnings by 52 to obtain the weekly figure, and division of the weekly figure by 5 to ascertain compensation for an 8-hour day. This formula was inconsistent with the Act of June 30, 1906,

the only statutory provision for dividing the "time and computation of pay for services rendered" by monthly employees. Under that Act, the monthly compensation must be divided by 30 in order to obtain "the daily rate of pay," and this method would result in a considerably lower amount of compensation than was reached by the court below. The formula of the 1906 Act for determining overtime pay for monthly employees is the one employed in the statutes which since 1940 have authorized overtime compensation for monthly employees, and Congress has never authorized a deviation from this basis for determining fractional compensation of monthly employees.

ARGUMENT

SECTION 23 OF THE ACT OF MARCH 28, 1934, IS NOT APPLICABLE TO EMPLOYEES PAID ON A MONTHLY OR ANNUAL BASIS

The Court of Claims held that the respondent came within Section 23 of the Act of March 28, 1934, because his compensation was set by a wage-board or other wage-fixing authority, and hence was entitled to overtime compensation for services in excess of 40 hours per week, even though he was employed and paid on a monthly basis (R. 14). Relying principally upon the broad language of the statute, the court rejected the Government's contention that the Act was intended to apply only to employees paid upon an

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hourly or per diem basis, and not to employees, such as the respondent, whose compensation was fixed upon a monthly or annual basis.

We submit that the construction made by the court below can be supported only if the language of the Act is read out of the context of its history and purposes. The Act is not to be construed in vacuo, as if it were a discrete instance of legislation dealing with overtime compensation for federal employees. The meaning of its elliptical language becomes clear when the statute is viewed in the perspective gained from examination of its background, its legislative history, the consistent administrative construction placed upon it, and its relation to other enactments of Congress dealing with the same subject-matter. These relevant, and indeed indispensable, aids to construction show that Section 23 was not intended to obliterate the distinction, deeply rooted in the system of federal employment and compensation, between treatment of hourly and per diem employees, on the one hand, and annual or monthly employees, on the other.

(A) THE LANGUAGE OF SECTION 23

Even if we look to no more than the language of the statute, the construction placed upon it by the court below presents serious practical difficulties. Title II of the Act of March 28, 1934, amended various "economy" statutes which had reduced the salaries of federal employees. Section 23 required

that the "weekly compensation * * * for the several trades and occupations, which is set by wage boards or other wage-fixing authorities, shall be reestablished and maintained at rates not lower than necessary to restore the full weekly earnings of such employees in accordance with the full-time weekly earnings under the respective wage schedules in effect on June 1, 1932." The Section also contained a proviso that "the regular hours of labor shall not be more than forty per week; and all overtime shall be compensated for at the rate of not less than time and one half."

Since "the general purpose of the section may be taken into account" in construing a proviso (*McDonald* v. *United States*, 279 U. S. 12, 22), the proviso in Section 23 may be regarded as coextensive in scope with that of the body of the Section.[5] The scope of the statute is indicated by the emphasis placed upon "weekly earnings" and by the reference to the "several trades and occupations" whose "weekly compensation" is set by wage boards or other wage-fixing authorities. Federal employees are customarily compensated on the basis of an annual or monthly salary, a daily wage, or an hourly rate. The Government does not employ or pay persons upon a weekly basis, as such. And, apart from the present Act, the term "weekly compensation" has been em-

[5] It was not contended below by the respondent, nor suggested by the Court of Claims, that the proviso was broader than the body of Section 23.

ployed by Congress only in relation to Government employees who are paid by the hour. Cf. Section 101 (a) of the Act of June 30, 1932, 47 Stat. 399; Act of June 26, 1936, 49 Stat. 1969 (5 U. S. C. 673c).

Any other use of the term inevitably gives rise to serious difficulties of computation. Daily or hourly compensation is readily reducible to a weekly rate, since the number of days or hours worked each week can be quickly and precisely determined. But if an employee is paid on an annual or monthly basis, his "weekly compensation" can be determined only hypothetically and inexactly. Neither a year nor a month contains an exact number of weeks,* and to estimate "weekly compensation" for such employees would require the preliminary selection of an arbitrary formula. The court below divided the annual pay by 52 (R. 13–14, 25), but, with equal justification, that figure could have been divided by 365¼ and the quotient multiplied by 7. If this method of computation were employed, a somewhat different result would be reached. Or if a "round figure" formula were adopted, the monthly pay would be divided by 30 and the quotient multiplied by 7 to reach another result different from the others (cf. Act of June 30, 1906, *supra*, pp. 3–4).

Any mode of computation of weekly compensation for annual or monthly employees would not

* Even a 28-day February only occasionally begins with a Monday and ends with a Sunday.

only necessitate the selection of some arbitrary formula, but would also be inconsistent with rulings of the Comptroller General. The Act of June 30, 1906, (*supra,* pp. 3–4), which the 1934 Act neither repealed nor amended, prescribes "rules for division of time and computation of pay for services rendered" by federal employees whose compensation "is annual or monthly", such rules consisting, in general, of the division of a month's pay into 30 daily units. But no method has ever been prescribed for reducing such compensation to a weekly basis, and the Comptroller General has repeatedly held that the compensation of monthly and annual employees is not and cannot be calculated on a weekly basis (12 Comp. Gen. 11, 14; 12 *id.* 204, 206; Opinion B–40532 to the Secretary of War, March 18, 1944).[7]

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[7] In the opinion of March 18, 1944, the Comptroller General stated:

"To determine the daily rate of a per annum salary of War Department employees there is no authority under existing law to divide the annual salary on any basis other than that specifically provided by the act of June 30, 1906, 34 Stat. 763 (5 U. S. Code 84), that is, into 12 equal installments, one of which shall be the pay for each calendar month, each of the 12 installments (or monthly compensation) to be divided by 30 to determine the daily rate, or a division of the annual rate by 360 to determine the daily rate. There is no authority of law to compute and to make payments for any fractional part of each calendar month of the year regardless of the number of days therein—whether such payments be made weekly or biweekly—on any basis other than that specifically prescribed by said statute. Hence, the annual rate may not be divided into 52

None of these difficulties occurs if Section 23 is limited to per diem or hourly employees. The "weekly compensation" of such employees is the product of the basic rate multiplied by the number of hours or days of work per week, both readily adjusted under the provisions of the Section to yield a result equivalent to the total weekly earnings under the wage schedule in effect on June 1, 1932. The basic rate thus determined could then be employed for the calculation of overtime compensation for such employees, in accordance with the uniform practice which, as we shall show, was also in effect on June 1, 1932.

Moreover, Section 23 of the 1934 Act in terms applies only to employees in the "several trades and occupations" whose compensation is fixed by

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equal installments. Neither may adjustments be made at the end of the year, nor may the annual salary be divided by 365 (or 366) to determine the daily rate. The amount of each week's compensation depends upon the number of calendar days (of the year) in the week for which a day's compensation ($\frac{1}{366}$) of the annual rate is payable, the thirtieth and thirty-first of a 31-day month to be regarded as one day, February 28, in other than leap years, to be regarded as 3 days, and February 29, in leap years, to be regarded as 2 days. For instance the pay for the week ending Saturday, March 4, 1944 (containing February 29) would differ from the pay for the week ending March 11, 1944. Likewise, the pay for the week ending Saturday April 1, 1944 (including March 31) would differ from the pay for the week ending April 8, 1944, as the pay for any week which includes the thirty-first day of a month would be less than the pay for any week that does not include the thirty-first day of a month."

a wage board.[8] There has been no judicial definition of this phrase nor, so far as can be discovered, any legislative use other than in Section 23 itself.[9] But the precise phrase occurs in the Navy wage board regulations and the annual schedules of wages issued by the Navy, both of which were in effect when the 1934 Act was passed. The Navy Department wage board procedure is based on the Act of July 16, 1862 (12 Stat. 587, 34 U. S. C. 505), which provides that "hours of labor and the rate of wages of the employees in the navy yards shall conform, as nearly as is consistent with the public interest, with those of private establishments in the immediate vicinity of the respective yards, * * * subject to the approval and revision of the Secretary of the Navy." Pursuant to

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[8] Employees whose compensation is fixed by a wage board are to be distinguished from those whose compensation is fixed pursuant to the Classification Act of 1923, 42 Stat. 1488 (5 U. S. C. 661 *et seq.*). The latter Act originally applied solely to the departmental service (in the District of Columbia) but was extended to the field service by the Welch and Brookhart Acts (45 Stat. 776; 46 Stat. 1003).

[9] Initially, the Comptroller General sought to define "* * * several trades and occupations * * *" as including all employees whose compensation was fixed by wage boards. 13 Comp. Gen. 265, 268. Subsequently, employees of the Alaska Railroad were held not subject to Section 23 on the ground that, although a procedure similar to wage board procedure was employed to establish their wages, railroading was not a "trade or occupation." 14 *id.* 42. Prior to 1934, the phrase, "wage boards or similar authority" appears only in the Act of July 3, 1918, 40 Stat. 757, 814, and in the Act of May 28, 1928, 45 Stat. 776, 785. In neither instance is the phrase defined.

this broad grant of power, schedules of wages have been issued annually for the navy yards pursuant to a detailed formalized procedure. See *Regulations for Boards and Wages of the Navy Department,* Circular letter SONYD–7–Gn, Navy Department, June 15, 1929. And it is significant, we believe, that these schedules set out, for each "trade or occupation" in every navy yard, rates of compensation which are entirely on an hourly or per diem basis. See, e. g., *Schedule of Wages for Civil Employees in the Field Service of the Navy Department and the Marine Corps* Revised to July 23, 1931, pp. 33–38. This schedule was in effect in June 1932, and it was the "wage schedules in effect on June 1, 1932" to which Section 23 refers as the standard for restoration of earnings (see p. 15, *supra*).

Moreover, the direction that "weekly compensation, minus any general percentage reduction which may be prescribed by Act of Congress, * * * shall be reestablished" clearly indicates that Congress intended to deal with employees whose compensation had actually been reduced by means other than the percentage reduction. As will be shown below, the compensation of annual or monthly employees had not been reduced by any means other than the percentage reduction. Considering the statutory language alone, therefore, we think it a more reasonable construction of Section 23 if it is limited to per diem and hourly workers, than if it is enlarged to include monthly and annual employees, as the court below concluded.

(B) THE LEGISLATIVE HISTORY

The Act of March 28, 1934, marked the end of the series of so-called "Economy Acts," a group of measures designed to decrease Government expenditures through the reduction of compensation and the suspension of privileges of federal employees.

The first Economy Act, approved June 30, 1932 (47 Stat. 382), established a regular schedule for reduction of the salaries of federal employees through a system of furlough or reduction of the workweek.[10] Thus, per diem officers and employees were given a maximum 5-day workweek for which they were to receive 10/11 of the salary payable for a regular 5½-day week (Sec. 101 (a)); and officers or employees paid on an annual basis were furloughed for one month without compensation.[11]

This furlough system was superseded by the Act of March 20, 1933, title II (48 Stat. 13, Sec. 3), which authorized a general percentage reduction up to 15 per cent, applicable to all federal employees, to be determined by periodic executive orders based on a 1928 cost-of-living index. The percentage reduction in the 1933 Act was intended as a complete substitute for the furlough as a

[10] This Act was continued for one year (until June 30, 1934) by the Treasury-Post Office Appropriation Act of March 3, 1933 (47 Stat. 1489), but was superseded March 20, 1933 by a second Economy Act.

[11] The pay reduction furloughs prescribed by Section 101 should be distinguished from the independent power

means of reducing compensation,[12] but it was found that this operated unfairly with respect to per diem employees, who suffered a greater pay reduction than the annual or monthly employees because their workweek had been decreased. This was brought to the attention of Congress at the hearings before the Senate Committee on Appropriations on H. R. 6663, the bill which became the Act of March 28, 1934. N. P. Alifas, representative of the Metal Trades' Department, American Federation of Labor, submitted a statement on behalf of "the 75,000 or more per diem mechanics and workmen employed at the navy yards, arsenals, the Panama Canal Zone, and numerous other divisions of the Federal service, whose wages are set by wage boards or similar wage-fixing authorities," in which he pointed out that while monthly and annual employees had suffered a 15 per cent wage reduction, per diem employees, when their weekly earnings were considered, had sustained a greater wage reduction than 15 per cent.[13] This

to furlough employees without pay to avoid exceeding appropriations or upon a failure of work. Cf. Section 216 of the Act of June 30, 1932, *supra*.

[12] In recommending the passage of H. R. 2820, which became the Act of March 20, 1933, *supra*, the Committee on Economy stated that there was "no possibility of a double reduction in salary, the present act is in lieu of the furlough plan * * *." H. Rept. 1, 73d Cong., 1st Sess., p. 7. The general pay reductions, attaining a maximum of 15 per cent, were gradually reduced until they were completely abolished in 1935.

[13] The full statement is set forth in Appendix A, *infra*, pp. 55–60.

greater wage reduction had been accomplished by the device of laying off per diem employees for one full working day every two weeks, thereby reducing the workweek for such employees to an average of 40 hours, while their basic salary was at the same time being reduced by the general percentage prescribed under the 1933 Act.[14] Mr. Alifas stated that this "furlough had practically become the permanent policy of the Navy Department and results in a permanent reduction of over 22% in the base pay of these employees." He maintained that a restoration of the 15 per cent wage reduction, which was then generally applicable to Government employees, would put monthly and annual employees on the salary base in effect prior to the Economy Acts, since their compensation in no way depended upon their hours of work, and that for the workweek shortened by the furlough they would receive the same salary as for a regular workweek of 44 hours. The per diem employees, on the other hand, would not be made whole by the restoration of the 15 per cent wage reduction unless they could earn for the shortened 40-hour workweek, which was the "permanent policy of the Navy Department," the same sum they previously had received for a 44-hour week. Mr. Alifas also asserted that per diem and hourly employees had been discharged

[14] On a 44-hour workweek basis, the elimination of eight hours every two weeks results in an average 40-hour workweek for such employees.

during the life of the Economy Act of March 20, 1933, due "to lack of work and lack of funds," and that upon being reemployed they were paid at lower rates of pay than they had previously received. To remedy this situation, he proposed the following amendment to H. R. 6663:

> *Provided,* That the rates of compensation for the several trades and occupations, which are set by wage boards or other wage-fixing authorities, shall be reestablished and maintained at rates not lower than the respective wage schedules in effect on June 1, 1932; and that the Navy Department and other departments and independent establishments of the Government are hereby directed to restore to employees any reduction in pay which they have received since June 30, 1932, in addition to the 15 per cent congressional cut, without increasing the present hours of service; and that the respective departments and independent offices are hereby authorized to incur such deficiencies as may be necessary to put this provision into effect. [Appendix A, *infra*, p. 58].

The bill was reported by the Senate Committee on Appropriations, without the amendment suggested by the spokesman for the American Federation of Labor (S. Rep. No. 294, 73d Cong., 2d Sess.). However, to accomplish the purpose of this proposed amendment, Senator Thomas of Oklahoma, on the floor of the Senate, successfully offered an amendment to the bill, identical in wording with

what eventually became Section 23 of the Act of March 28, 1934. Senator Thomas, in offering the amendment, unmistakably indicated that he was acting on behalf of the per diem employees for whom the representative of the American Federation of Labor had appeared before the Senate Subcommittee (78 Cong. Rec. 2977):

> Mr. THOMAS of Oklahoma. Mr. President, this amendment is offered to help the employees in the navy yards, the arsenals, the Panama Canal Zone, the Government Printing Office, and the Bureau of Engraving and Printing. It simply proposes to put them back on the same status they occupied in July of 1932.
>
> * * * * *
>
> Mr. THOMAS of Oklahoma. Mr. President, the amendment adopted this afternoon restores their pay cut, it is true, provided that amendment remains in the law. This amendment proposes to give the employees of these several bureaus an increase in their pay even though they do not have to work an increased number of hours. At the present time they work 40 hours and get 44 hours' pay. Under the amendment it is possible that the board that has control of these employees will let them work 40 hours and they will possibly get 48 hours' pay, ***provided they get an increase of their hourly pay.*** [Italics supplied.]

No reference was made to Senator Thomas's amendment during the further consideration of H. R. 6663 by both Houses of Congress, and the

bill was passed. The President vetoed the Act primarily because of the provisions for veterans' benefits, but his veto message also criticized Section 23 on the ground that it was discriminatory in paying "employees in some departments of the Government 48 hours pay for 40 hours' work" (House Doc. 291, 73d Cong., 2d Sess., p. 2). The Act became law over the President's veto, however, and the debates in Congress with respect to the veto message showed that Congress contemplated that the measure was limited to the per diem employees whose hours of labor, upon which their compensation depended, had been reduced as a "permanent policy" (78 Cong. Rec. 5574):

> Mr. CUTTING. * * *
>
> The President goes on to say in the same connection that—
>
> The bill also contains several discriminatory provisions, such as paying employees in some departments of the Government 48 hours' pay for 40 hours' work.
>
> Mr. President, is not that exactly the same plan which is being proposed to industry at the present time? Is not that in effect what the N. R. A. is trying to do, to pay the same amount of wages for shorter periods of labor? If so, how can we make a discrimination on a matter of principle between what the Government is willing to do itself and what it is urging industry to do?
>
> * * * * * *
>
> Mr. WALSH. Does that refer to the class

> of employees who are working in navy yards, and who have had their hours of labor reduced from 48 to 40?
>
> Mr. CUTTING. I cannot interpret what the President's message means. I can quote his language to the Senator:
>
> * * * * *
>
> Mr. WALSH. The navy-yard employees have been contending that their hours of employment were reduced from 48 to 40, and that their wages were reduced at the same time from the 48-hour wage to the 40-hour wage. I think the reference is to that.

The analogy thus drawn between Section 23 and the N. I. R. A. is significant, since the Court of Claims has held that the N. I. R. A. was not designed to increase the compensation of employees "on a straight salary basis" but only of employees "on an hourly basis." *Steel Products Engineering Co.* v. *United States*, 90 C. Cls. 513, 517. And although the Court of Claims in the present case recognized that Section 23 was the result of the testimony and efforts of N. P. Alifas, the spokesman for the American Federation of Labor (R. 18), it rejected the plain evidence of Congressional purpose disclosed by the legislative history. The court could find nothing "in the text of Section 23" or "in the debates in Congress" which "even suggests the distinction which the Government asks us to draw" (R. 19). As we have shown (*supra*, pp. 14–20), the language of

the statute is not only susceptible of the interpretation that it covers per diem and hourly workers only, but is in fact most easily so read. Even if the language of the statute were less equivocal, the legislative materials would afford relevant aids to construction. *United States* v. *Fisher*, 2 Cranch 358, 386; *Boston Sand & Gravel Co.* v. *United States*, 278 U. S. 41, 48; *United States* v. *Dickerson*, 310 U. S. 554; *United States* v. *American Trucking Ass'ns*, 310 U. S. 534; *Harrison* v. *Northern Trust Co.*, 317 U. S. 476. Resort to such aids to construction shows clearly that, in enacting Section 23, Congress was concerned only with those employees who were paid on a per diem or hourly basis.

(C) RELATED LEGISLATION

The federal statutes dealing with the problem of overtime compensation for Government employees, including Section 23 of the 1934 Act, are consistent only with the premise that Congress, prior to 1940, did not intend to grant overtime benefits to Government employees employed and paid on a monthly or annual basis, whether their salaries were fixed by wage boards or under the Classification Act of 1923.[15] Indeed, many provi-

[15] The subsequent legislative materials were presented to the court below by the Government on its motion for new trial, but the court brushed these statutes aside as merely resolving the question of overtime "for the future" (R. 25).

sions of the overtime statutes enacted between 1936 and 1943 are inexplicable if Section 23 of the 1934 Act is regarded as having already provided overtime compensation for monthly and annual employees whose salaries were fixed by a wage board.

(1) The Act of June 26, 1936

About two years after passage of the Act of March 28, 1934, Congress amended Section 23 by adding the following paragraph:

> Where the adjustment of regular hours of duty of employees subject to the provisions of the preceding paragraph requires the adjustment of regular hours of duty of any employee whose compensation is fixed under the Classification Act of 1923, as amended, the aggregate *weekly earnings* of such employee whose compensation is fixed under the Classification Act of 1923, as amended, for full-time service shall not be less by reason of such adjustment than his aggregate *weekly earnings* for full-time service prior to March 28, 1934. Full-time service within the meaning of this paragraph shall not be less than forty hours per week. For the purposes of this paragraph, authority is hereby granted to adjust the *hourly rates of compensation* of employees whose compensation is fixed under the Classification Act of 1923, as amended, to such extent as may be necessary to make the aggregate *compensation for a forty-hour week* equal to the *compensation for a full-time week* prior to

March 28, 1934. [Italics supplied.] (Act of June 26, 1936, 49 Stat. 1969, 5 U. S. C. 673c).

This amendment evidences additional legislative recognition that "weekly earnings" and "hourly rates of compensation" are harmonious categories. And the legislative materials bearing upon the amendment clearly indicate that Congress assumed that the 1934 Act provided a 40-hour week for only such unclassified employees as were paid on an hourly or per diem basis.

The spokesmen for the Bureau of Engraving and Printing (the agency primarily responsible for the 1936 amendment) stated to the House Committee on the Civil Service that Section 23 of the 1934 Act provided a 40-hour week for employees engaged in mechanical trades (whose wages were fixed by a wage board and who were therefore not covered by the Classification Act of 1923); and that while such employees were working only 40 hours per week, other hourly employees covered by the Classification Act of 1923 were working 44 hours per week in accordance with applicable federal statutes. Accordingly, in order to authorize a 40-hour week for the latter group of employees, while maintaining their weekly compensation unimpaired, the 1936 amendment was enacted, granting authority "to adjust the hourly rates of compensation" of classified employees "to such extent as may be necessary to make the aggregate compensation for a forty-hour week equal to the

compensation for a full-time week prior to March 28, 1934."[16]

(2) *Overtime legislation enacted during the period of the war and national emergency*

The temporary overtime legislation enacted during the current period of war and national emergency has expressly been made applicable to employees whose wages are fixed on a monthly or annual basis by wage boards or other wage-fixing authorities. Plainly, therefore, such employees were not regarded by Congress as having been included within the overtime provisions of Section 23 of the 1934 Act; otherwise, the recent legislation would, to that extent, have been unnecessary.

[16] The House Committee explained the purpose of this amendment as follows (H. Rep. 2827, 74th Cong., 2d Sess., pp. 1–2):

"Section 23 of the [1934 Act] provided a 40-hour week for employees of the Bureau of Engraving and Printing engaged in mechanical trades. This affected 780 of the 4,203 employees, giving them a full week's pay for 40 working hours while the remainder, number 3,423, continued to be required to work 44 hours.

"This situation constitutes a very difficult administrative problem for the Bureau of Engraving and Printing, making it necessary to continue to operate on a 44-hour week basis and requiring that the working hours for members of the trades be staggered.

"The committee feels that in view of the granting of a 40-hour week to the employees engaged in the trades, and the further fact that Congress has extended the 40-hour week to postal employees and others, it is only fair to give the Secretary of the Treasury authority to extend it to the other employees of the Bureau of Engraving and Printing."

No such problem existed in the case of employees covered

The legislative history of the emergency overtime pay laws makes this overwhelmingly clear.

(1) *The Act of June 28, 1940*

Section 5 (a) of the Act of June 28, 1940 (54 Stat. 676, 678), which expired June 30, 1942, provided, *inter alia*, that:

> Notwithstanding the provisions of any other law, the regular working hours of the Navy Department and the Coast Guard and their field services shall be eight hours a day or forty hours per week during the period of the national emergency declared by the President on September 8, 1939, to exist: * * * *Provided further*, That compensation for employment in excess of forty hours in any administrative work-week computed at a rate not less than one and one-half times the regular rate *shall be paid only to monthly, per diem, hourly, and piece-work employees*, whose wages are set by the Act of July 16, 1862 (12 Stat. 587), as amended or modified; and also to professional and subprofessional employees and to [certain other employees] of the CAF service, as defined by the Classification Act of March 4, 1923 * * *: *Provided further*, That in determining the overtime compensation of per annum Government employees the pay for one day shall be con-

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by the Classification Act who were employed other than on an hourly basis because working hours of an establishment could be reduced where desirable in order to comply with Section 23 without reducing their compensation. See, e. g., 13 Comp. 277, 280.

> sidered to be one-three-hundred-and-sixtieth of their respective per annum salaries * * * [Italics supplied.]

In its report on the bill, H. R. 9822, the Senate Committee on Naval Affairs observed that this was the first instance of overtime compensation to monthly and annual employees (S. Rep. No. 1863, 76th Cong., 3d Sess., pp. 11–12):

> As to compensation, section 5 (a) * * * simply provides that with the establishment of a 40-hour workweek all employees in the Navy Department, the Coast Guard and their field services shall receive uniform treatment in the payment of compensation for employment in excess of 40 hours in any administrative work [sic] of 7 days. In this regard, the provision for the payment of compensation to per annum and per month employees is a departure from the practice heretofore followed. * * *

Similarly, the House Committee on Naval Affairs, in reporting the bill, stated (H. Rep. No. 2257, 76th Cong., 3d Sess., pp. 3–4):

> Overtime pay has heretofore not been allowed to any per annum employees of the Government, although overtime pay at time and one-half is allowed to per diem employees. * * *
>
> In order to calculate the amount of overtime pay for per annum employees it is necessary to specify in the act the corresponding daily pay. This has been done in accordance with long-standing Government

custom by fixing it at one three-hundred-and-sixtieth of the annual salary on the customary basis of 12 months to a year and 30 days to a month.

(iii) *The Act of October 21, 1940*

The Act of October 21, 1940 (54 Stat. 1205), which expired on June 30, 1942, provided overtime compensation, *inter alia*, for monthly employees whose wages are set by wage boards or other wage-fixing authorities:

> notwithstanding the provisions of any other law, compensation for employment in excess of forty hours in any administrative workweek computed at a rate not less than one and one-half times the regular rate is hereby authorized to be paid at such places and *to such monthly*, per diem, hourly, and piecework *employees* of the field services of the War Department and *the field services of the Panama Canal whose wages are set by wage boards or other wage fixing authorities*, and also to professional and subprofessional employees and to [certain other employees] of the CAF service, as defined by the Classification Act of March 4, 1923 * * * *as shall be designated from time to time by* the Secretary of War or *the Governor of the Panama Canal*, as the case may be. * * *: *Provided*, That in determining the overtime compensation of the foregoing per annum Government employees the pay for one day shall be considered to be one three-hundred-and-six-

tieth of their respective per annum salaries. [Italics supplied.]

The proponents of this measure expressed their understanding that it would place annual and monthly employees on the same overtime basis as other employees.[37]

(iii) *The Act of June 3, 1941*

By the Act of June 3, 1941 (55 Stat. 241), which also expired on June 30, 1942, Congress au-

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[37] In the discussion in the Senate on the bill (S. 4208) which became the Act of October 21, 1940, Senator Danaher asked whether "its provisions would supplement the provisions of other legislation in which we undertook to deal with prevailing rates of labor, and generally dealing with construction items of that sort in the Canal Zone." Senator Thomas of Utah answered (86 Cong. Rec. 13421):

"* * * I think the answer to that question is, 'Yes,' although the word 'supplement' is hardly the right word. We have passed a measure providing for an 8-hour day and a 40-hour week for the ordinary workers in Government arsenals and those now doing defense work. Other workers are on an annual wage. In order to make the pay during this time consistent the Senate committee amendment is necessary."

In the House debates on S. 4208, Mr. Ramspeck of the House Committee on the Civil Service, pointed out that (86 Cong. Rec. 13557):

"The Secretary of War and the Assistant Secretary of War * * * say that they have the legal authority now to pay overtime to certain employees of the War Department in the arsenals and at the Panama Canal, but as to others they have not this authority and this creates a bad administrative situation. They have recommended this bill, which has passed the Senate, and it is my understanding we have given the same authority to the Navy Department as to the Navy yards."

thorized payment of overtime compensation to annual employees of the field services of the War Department, the Panama Canal, the Navy Department, and the Coast Guard engaged in the same overtime work as that upon which employees specified in Section 5 (a) of the Act of June 28, 1940, *supra*, p. 32, and in the Act of October 21, 1940, *supra*, p. 34, were engaged. Senator Reynolds, when introducing S. 1541, the bill which became the Act of June 3, 1941, quoted as follows from a letter of the War Department of May 19, 1941 (87 Cong. Rec. 4275–4276):

> The bill provides for overtime work in the Field Service of the War Department at the rate of time and one-half for per annum employees.
>
> The bill merely places them on the same basis that laborers and mechanics are now on.
>
> It also gives the War Department power to keep the Field Service employees at work during the time when they would otherwise be on vacation. * * * .

See H. Rep. No. 593, 77th Cong., 1st Sess., p. 1, to the same effect.

(iv) *Joint Resolution of December 22, 1942*

The Joint Resolution of December 22, 1942 (56 Stat. 1068), provided overtime pay for Government employees, but excluded from its scope those employees "whose wages are fixed on a daily or hourly basis and adjusted from time to time in accordance with prevailing rates by wage boards

or similar administrative authority serving the same purpose" (§1), thus recognizing that monthly and annual employees whose compensation was fixed by wage boards were within the class for which legislation authorizing overtime pay was necessary. The Senate report on this measure stated (S. Rep. No. 1847, on S. J. Res. 170, 77th Cong., 2d Sess., pp. 2–3):

> The joint resolution provides for the extension until April 30, 1943, of the laws authorizing the payment of overtime compensation to per annum employees in the War and Navy Departments, and for the extension of such authority to cover other employees of the Government. The joint resolution will not affect employees whose compensation is based upon hourly rates fixed and adjusted by wage boards or similar administrative, * * *.
>
> "The overtime compensation payable under the joint resolution would be computed at the rate of one and one-half times an employee's regular basic rate. For the purpose of such computation the basic rate for 1 day will be considered to be one three-hundred-and-sixtieth of so much of an employee's annual salary as does not exceed $2,900 per annum * * *.

(v) *War Overtime Pay Act of 1943*

Any doubt as to the understanding of Congress with respect to the scope of the overtime benefits of Section 23 of the 1934 Act is removed by the

War Overtime Pay Act of 1943,[18] § 1 of which provides:

> * * * That this Act shall apply to all civilian officers and employees (*including officers and employees whose wages are fixed on a monthly or yearly basis and adjusted from time to time in accordance with prevailing rates by wage boards or similar administrative authority serving the same purpose*, except those in or under the Government Printing Office or the Tennessee Valley Authority) in or under the United States Government, including Government-owned or controlled corporations, * * * *except that this Act shall not apply to* * * * *employees whose wages are fixed on a daily or hourly basis and adjusted from time to time in accordance with prevailing rates by wage boards or similar administrative authority serving the same purpose;* * * *. [Italics supplied.]

The Act of 1943 thus specifically distinguishes between the two classes of employees whose wages are fixed by wage boards or other wage-fixing authorities, namely, (1) monthly and annual employees, and (2) hourly and per diem employees. The Act provides for the payment of overtime to the monthly and annual class, but excludes hourly and per diem employees. The legislative history clearly shows that the exclusion was based on the

[18] Act of May 7, 1943, 57 Stat. 75; this statute "shall terminate on June 30, 1945, or such earlier date as the Congress by concurrent resolution may prescribe."

assumption of Congress that overtime pay had already been provided for hourly and per diem employees, but not for monthly and annual employees, by Section 23 of the 1934 Act. Thus, during the consideration of the bill (H. R. 1860) which became the 1943 Act, an amendment was offered in the Senate to extend the bill to employees already entitled to overtime compensation under Section 23 of the 1934 Act, and to preclude payment of overtime under Section 23. The Senate rejected the amendment (89 Cong. Rec. 3176, 3185). And in presenting the Conference Committee report on the bill, as subsequently enacted, Representative Ramspeck stated in the House that the purpose of the measure was "to give additional pay to a million and a half employees of the Government who are not covered by other pay legislation" (89 Cong. Rec. 3654).

Both the Joint Resolution of December 22, 1942, and the War Overtime Pay Act of 1943 fix overtime compensation for monthly and annual employees by computing the daily rate as $\frac{1}{360}$ of the employee's annual pay. This formula is substantially less advantageous to the employee than that provided for per diem and hourly employees under Section 23 of the 1934 Act. The resulting discrimination between monthly and annual employees under the 1943 Act and per diem and hourly employees under Section 23 of the 1934 Act was called to the attention of Congress, but

the method was nevertheless adopted despite efforts to amend the bill to provide overtime payments for all on the more liberal basis.[19] If the monthly and annual employees expressly included in the 1943 Act were already entitled to overtime pay under the more liberal provisions of Section 23 of the 1934 Act, as the court below held, it is not unreasonable to suppose that they would have been excluded from the 1943 Act together with the per diem and hourly employees who are admittedly entitled to overtime pay under Section 23.

It is settled that "subsequent legislation may be considered to assist in the interpretation of prior legislation upon the same subject." *Tiger* v. *Western Investment Co.*, 221 U. S. 286, 309; *Great Northern Ry. Co.* v. *United States*, 315 U. S. 262, 277; cf. *United States* v. *Hutcheson*, 312 U. S. 219. For when Congress, acting over a period of years, passes a series of statutes dealing with the same subject matter, the acts are to be construed in their historic setting as segments of an integrated whole. As Chief Justice Taney said in *Brown* v. *Duchesne*, 19 How. 183, 194, "it is well settled that,

[19] See 89 Cong. Rec. 3128, 3176, and 3559, where the Senate rejected an amendment to H. R. 1860 to provide that, in computing overtime compensation of per annum employees, the base pay for one day should be considered as $\frac{1}{260}$ of the anual salary and the base pay for one hour should be $\frac{1}{8}$ of base pay so computed for one day.

in interpreting a statute, the court will not look merely to a particular clause in which general words may be used, but will take in connection with it the whole statute (or statutes on the same subject) and the objects and policy of the law * * *." Compare the observation of Mr. Justice Reed in *United States* v. *Emory*, 314 U. S. 423, 434 (dissent): "A statute is not to be interpreted by its text alone, as though it were a specimen under laboratory control. It takes meaning from other enactments forming the whole body of law bearing upon its subject." See, also, *Keifer & Keifer* v. *R. F. C.*, 306 U. S. 381, 391, and authorities there cited; *Saxonville Mills* v. *Russell*, 116 U. S. 13, 21; *United States* v. *Barnes*, 222 U. S. 513, 520; *United States* v. *Sweet*, 245 U. S. 563, 572; *United States* v. *Jefferson Electric Co.*, 291 U. S. 386, 396; *United States* v. *Freeman*, 3 How. 556, 564. Viewed from this perspective, a statute derives meaning from later as well as earlier enactments. Many provisions of the overtime statutes enacted between 1936 and 1943 become virtually meaningless if Section 23 of the 1934 Act is to be construed as having already provided overtime compensation for monthly and annual employees whose salary was fixed by a wage board. We submit that the enactments of Congress dealing with overtime compensation for federal employees, considered in their entirety, reject the view that Section 23 of the 1934 Act was meant to apply to employees paid upon a monthly or annual basis.

(d) ADMINISTRATIVE PRACTICE.

(1) *Overtime Practice Prior to 1934 Act.*

The distinction between employees compensated on a monthly or annual basis, and those paid on a per diem or hourly basis, is firmly implanted in the federal employment system. Where the position is set up on an annual or monthly basis, the whole job to be performed is taken into consideration and the compensation fixed accordingly. The employee who fills such a position is usually retained even though the pressure of work varies and there may be an occasional slack in the work. As to such employees, minimum hours of employment were fixed at seven hours a day by the Act of March 3, 1883,[20] with power in the heads of departments to increase the hours of service above this minimum, but the Act specifically forbade the payment of additional compensation.[21] This statute embodied the traditional view that monthly and annual employees are deemed to be compensated for all the time necessary to fulfill the duties of their positions. See 2 Comp. Gen. 78; 2 *id.* 817.[22]

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[20] C. 128, 22 Stat. 531, 563; continued by the Act of March 15, 1898, c. 68, Sec. 7, 30 Stat. 316 (5 U. S. C. 29).

[21] The proviso against extra compensation in the Act of 1883 was superseded by Section 6 of the War Overtime Pay Act of 1943, the remainder of the statute still remaining effective. 22 Comp. Gen. 619.

[22] Specific statutory exceptions have been made for certain employees such as those in the postal service, railway mail clerk, customs inspectors, immigration officials, meat

In marked contrast has been the treatment of per diem and hourly employees. Here, compensation is proportionate to output; overtime has been considered payable and has usually been paid (see Mayers, *The Federal Service*, pp. 519–521), either pursuant to statutory mandate or by specific agreement. 11 Comp. Dec. 377; 15 *id.* 620; 25 *id.* 359; 7 Comp. Gen. 73; cf. *United States* v. *Martin*, 94 U. S. 400.[23] This has been true of all such employees, whether classified or otherwise.

Section 23 of the 1934 Act deals with the "weekly compensation * * * set by wage boards or other wage-fixing authorities." The agencies employing wage board procedure, primarily the Navy Department, the Government Printing Office, and the Bureau of Engraving and Printing, have always been accorded the utmost freedom, compatible with the public interest, for handling employment problems.[24] Such freedom

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inspectors, etc. See 19 U. S. C. 267; 7 U. S. C. 394; 8 U. S. C. 109a, 109b; 39 U. S. C. 832; 39 U. S. C., Supp. III, 835.

[23] Questions as to overtime compensation for per diem and hourly employees arose under the Eight Hour Laws. Act of August 1, 1892, c. 352, 27 Stat. 340; Act of March 3, 1913, c. 106, 37 Stat. 726 (40 U. S. C. 321, 326). See 22 Comp. Gen. 926. An 8-hour day for hourly or per diem employees "above the grade of laborer" was prescribed for the Canal Zone by Executive Order No. 1888, promulgated on February 2, 1914, Sec. 12 (R. 38).

[24] Section 5 of the Classification Act of 1923, Act of May 4, 1923, 42 Stat. 1488, exempts from its scope apprentices, helpers and journeymen "in a recognized trade or craft." This exemption was extended to the field service by the

arose from the need of these agencies, in pursuing their industrial functions, for authority to handle wages of the required artisans flexibly, in order to compete with private industry at prevailing rates for the same class of employees in the community. See *Closing Report of Wage and Personnel Survey,* House Doc. 771, 71st Cong., 3d Session, p. 308 *et seq.;* 13 Comp. Gen. 265, 267, 13 *id.* 486.

Although the maximum amount of discretion in fixing terms of employment has traditionally been possessed by the agencies which employ wage board procedures, the basic distinction between annual or monthly and hourly or daily workers has always been observed, despite wide variance in the type of wage board procedure employed. Where positions have been classified on an annual or monthly compensation basis, the holders of such positions have customarily received no overtime pay. On the other hand, hourly or per diem workers, the bulk of the "apprentices, helpers, and journeymen" employed, have been paid overtime at straight or premium rates. Thus, schedules of wages promulgated by the Navy Department in 1931, and in effect in June 1932, the base period of reference in the 1934 Act made provision for

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Act of May 28, 1928, 45 Stat. 776, and the Act of July 3, 1930, 46 Stat. 1003. See, also, Act of November 26, 1940, Title II, § 3 (d) (xi), 54 Stat. 1212. The statutory exemption phrase, members of "recognized trade or craft," is apparently the equivalent of the "several trades and occupations" referred to in Section 23.

overtime, Sunday and holiday pay [25] for per diem employees, but specified that employees paid on a per annum or per month basis were not entitled to such additional compensation. *Schedule of Wages for Civil Employees in the Field Service of the Navy Department and the Marine Corps* Revised to July 23, 1931, p. 60.

Similarly, both the Bureau of Engraving and Printing [26] and the Government Printing Office [27]

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[25] In connection with holiday pay, the Joint Resolution of January 6, 1885, 23 Stat. 516, 5 U. S. C. 86, refers to "* * * employees of the Navy Yard, the Government Printing Office, Bureau of Printing and Engraving, *and all other per diem* employees of the Government * * *." [Italics supplied.]

[26] See Appendix B, *infra*, pp. 61–62. The Bureau of Engraving and Printing employs its required mechanical employees under Treasury appropriation acts which grant funds for "* * * other personal services * * * including wages of rotary press plate printers at per diem rates and all other plate printers at piece rates * * *, not to exceed the rates usually paid for such work * * *". Treasury Appropriation Act of July 5, 1932, c. 430, 47 Stat. 580, 588; Treasury Appropriation Act of February 23, 1931, c. 277, 46 Stat. 1217, 1226; Treasury Appropriation Act of May 15, 1930, c. 289, 46 Stat. 335, 345. After reference to prevailing rates, the terms of compensation established are set forth in the civil service forms used for appointments.

[27] The Congressional Printer was granted power, by R. S. 3763 to employ pressmen, binders, and other employees "at such rates of wages as he may deem for the interest of the Government and just to the persons employed * * *". For many years prior to 1924, the Government Printing Office functioned under a series of specific statutes which established hourly rates for the various

observed and applied the accepted distinction between per annum and hourly employees as to the payment of overtime compensation. The Government Printing Office affords a particularly striking illustration of the basic nature of the distinction since it handled employment under the Act of June 7, 1924 (43 Stat. 658, 44 U. S. C. 40). Although this statute granted the Public Printer broad power to determine wages, including compensation for night and overtime work, at no time was overtime paid to monthly or annual employees under this or any other act. See 13 Comp. Gen. 265, 270.

The same situation existed with respect to the Panama Canal, the agency here involved. In the exercise of his power to fix the general conditions of employment in the Canal Zone under the Act of August 24, 1912, the President promulgated Executive Order No. 1888 on February 2, 1914, establishing overtime compensation at the rate of "time and one-half" for per diem and hourly workers (Sec. 12), but Section 11 of the Order forbade pay-

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classes of necessary employees, such as pressmen, binders, leather parers, etc. Act of February 16, 1877, c. 58, 19 Stat. 231; Act of March 3, 1891, c. 350, 26 Stat. 1084; Act of June 6, 1900, c. 791, § 1, 31 Stat. 643; Act of August 24, 1912, c. 355, 37 Stat. 482; Act of August 2, 1919, c. 30, 41 Stat. 272. In one such statute providing extra compensation for Sunday work, per annum employees were mentioned for the purpose of being excluded from the benefits of the act. Act of March 4, 1909, c. 299, § 1, 35 Stat. 1021, 1024.

ment of overtime compensation to employees paid on a monthly or annual basis. This prohibition was equally observed in regard to monthly and annual employees who were members of the A. F. of L. and whose wages were fixed by the advisory board established for that purpose by the President in 1919 (see p. 5, *supra*).[28]

The long-standing distinction in the field of overtime compensation, between monthly and annual employees, on the one hand, and per diem and hourly employees on the other, has an equitable as well as practical basis. The former group have a relatively greater security of tenure than the latter, who are usually laid off whenever the work slackens temporarily. Members of the monthly-annual category usually occupy the more important Government posts, with substantial responsibility and relatively higher rates of pay.[29] And as is well known in Government service, those holding executive or supervisory positions are expected to put in such additional hours of work—

[28] The Board's advisory jurisdiction was composed, in general, of cases relating to "hourly rates for all crafts, monthly rates derived from hourly rates, and monthly rates such as those for employees of floating equipment, in the transportation department of the Panama Railroad, or elsewhere," which are derived from rates paid for the same or similar services in the United States (R. 9).

[29] In all three of the positions held by respondent during the claim period—operator, chief operator, and master of a dredge—he was required to hold a license as "master, Pipe Line Suction Dredge," issued by the Board of Local Inspectors of the Panama Canal (R. 6, 7, 8).

on Sundays, holidays, or evenings—as may be necessary for the proper discharge of their functions, usually without additional compensation. Moreover, certain perquisites of office attach to the monthly-annual jobs which do not apply to the hourly-per diem jobs, e. g., more favorable leave provisions. Thus, monthly employees in the Canal Zone (including respondent) were accorded 24 days annual leave, 30 days additional "cumulative leave," and 7 days travel leave, a total of 61 days of leave annually (R. 43–45). This is to be compared with the total leave for per diem and hourly employees of 51 days (including 20 days cumulative leave) (R. 44).

(2) *Administrative practice after 1934 Act.*

The practice of not paying overtime compensation to annual or monthly employees continued uninterruptedly after passage of the 1934 Act. This administrative practice by the major agencies affected by the provisions of that Act is another factor supporting the construction of Section 23 for which we contend.[30] Relying upon rulings of the Comptroller General that Section 23 did not authorize payment of overtime to annual and

[30] As previously pointed out, the agencies who have exercised the power of determining conditions of employment and compensation by wage boards or similar procedures have always administered this power as being limited by the Act of March 3, 1883, *supra*, p. 42, and the Act of March 15, 1898, *supra*, p 42.

monthly employees,[31] the Navy Department, the Government Printing Office and the Bureau of Engraving and Printing have interpreted Section 23 as applicable only to per diem and hourly employees.[32] And the Canal Zone has likewise followed that interpretation consistently. Since

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[31] 13 Comp. Gen. 265, 270; 13 *id.* 280; 14 *id.* 156, 164. The Comptroller General interpreted Section 23 as applying to the hours of work of monthly and annual employees, but as not affecting their compensation, and hence as not authorizing overtime compensation for such employees. He accorded the same treatment to the 40-hour law obtained by postal employees shortly after the passage of Section 23. Act of August 14, 1935, 49 Stat. 650; 15 Comp. Gen. 175. This interpretation was specifically rejected by Congress. Act of May 7, 1936, 49 Stat. 1266. No such action was taken as to the Comptroller General's interpretation of the 1934 Act.

[32] This consistent administrative practice was partially brought to the attention of the court below by the Government on its first motion for a new trial, in the form of letters which disclosed that the administrative practice of the War and Navy Departments had always been to pay no overtime to ~~hourly~~ or monthly employees. The court discounted this evidence of administrative practice on the ground that the letters did not show that such employees had in fact been worked overtime subsequent to the passage of the 1934 Act. Additional inquiries were then directed by the Department of Justice to the Government Printing Office, the Bureau of Engraving and Printing, and the Navy Department. Letters elicited by these inquiries disclosed that monthly and annual employees had, in fact, been working in excess of forty hours per week subsequent to the passage of Section 23 and that no overtime had been paid. These letters were submitted to the Court of Claims by the Government on its second motion for a new trial, but the motion was overruled on the day it was made.

1934, the Panama Canal has employed on an annual average 1,450 American employees not within the Classification Act, who are compensated on a monthly or annual basis and have an average annual salary of $3,148. None of such employees was paid overtime until enactment of the Act of October 21, 1940 (54 Stat. 1205), which expressly authorized such payment to monthly employees. (See pages 7–8, 34, *supra*)[33]

This uniform administrative interpretation and practice under the 1934 Act, in effect for some 6 years before the present suit was brought, was open and well-known, and hence presumably was known to Congress.[34] Cf. *Copper Queen Mining Co.* v. *Arizona Board*, 206 U. S. 474, 479; *United*

[33] The letters showing the administrative practice are contained in Appendix C, *infra*, pp. 63–66. The War Department is excluded from the instant discussion of administrative practice in view of a ruling of the Comptroller General that the methods of employment utilized by it do not constitute the use of wage boards or similar procedure within the meaning of the statute. 13 Comp. Gen. 486; 14 *id.* 552; letter of April 8, 1944, from War Department to Mr. B. F. Burdick, Chief of Office, The Panama Canal, Washington, D. C., Appendix D, *infra*, pp. 67–68.

[34] The administrative construction of Section 23 of the 1934 Act as being inapplicable to marine employees of the Canal Zone, such as the respondent, was brought to the attention of Congress in connection with the Act of July 9, 1937 (50 Stat. 486), reaffirming the President's authority to fix conditions of employment for employees of the Panama Canal. The Comptroller General had ruled (14 Comp. Gen. 156, 158, 165) that Section 23 did not apply to marine employees of the Canal Zone, because their rates

States v. *G. Falk & Brother*, 264 U. S. 143, 150, 152. To construe the statute as urged by the Government brings it into harmony with prior law and the uninterrupted administrative action of more than 50 years. To construe it as did the Court of Claims is to impute to Congress an intent radically to change settled administrative practice and to effect a major classification change, by means of a statute ostensibly designed for the more limited purpose of restoring a certain group of employees to their status prior to the Economy Acts.

II

THE COURT OF CLAIMS EMPLOYED AN INCORRECT METHOD OF COMPUTING OVERTIME COMPENSATION

Assuming that Section 23 is applicable to the respondent, it is submitted that the method of computing overtime compensation used by the court below was incorrect.

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were based upon those of similar employees in the continental United States whose compensation was fixed pursuant to statute, and not by wage boards or other wage-fixing authorities. The court below evidently misunderstood the Comptroller General's ruling; its opinion erroneously states that the Governor, in disregard of this ruling, required the respondent to work 48 hours per week (R. 14–17).

During the consideration of the 1937 Act in Congress, the Governor of the Canal Zone and the Secretary of War, in letters addressed to the chairman of the Senate and House Committees considering the legislation (see Appendices E and F, *infra*, pp. 69–86) pointed out that Section 23 had been construed by the Comptroller General as "not applicable to American employees of the Canal generally," which obviously included the marine employees.

In order to determine the daily wage rate which should be used as the base for computing the "time and-one-half" rate for overtime, the court below multiplied respondent's monthly salary by 12, divided the result by 52 to obtain a weekly figure, and divided the weekly figure by 5 to ascertain the compensation for an 8-hour day. The method used was inconsistent with the only formula permitted by law for converting a monthly or annual salary to a per diem basis.

If the respondent was subject to Section 23 between 1934 and 1939, it was as an employee whose monthly compensation was fixed, in terms of fractional portions, by the Act of June 30, 1906 (c. 3914, § 6, 34 Stat. 763, 5 U. S. C. 84). That Act establishes "the following rules for division of time and computation of pay for services rendered" by monthly employees:[35]

> * * * in making payments for a fractional part of a month one-thirtieth * * * of a monthly compensation, shall be the daily rate of pay. For the purpose of computing such compensation and for

[35] In his brief below, the respondent endeavored to find a contradiction between this statute and the position taken by the Government as to the right to overtime. The Act of June 30, 1906, is not an overtime statute but is rather designed to provide a method of calculating fractions of compensation periods. The respondent's contention in fact supports the position taken in this brief, namely, that if Section 23 is applicable, the respondent's overtime compensation is governed by the 1906 Act, in the absence of any contrary direction in the 1934 Act.

> computing time for services rendered during a fractional part of a month in connection with * * * monthly compensation, each and every month shall be held to consist of thirty days, without regard to the actual number of days in any calendar month, thus excluding the thirty-first of any calendar month from the computation and treating February as if it actually had thirty days. * * *

If the above-defined method be applied to the respondent's monthly salary ($336) as master during the period December 1, 1937 to August 31, 1939, his allocable daily salary would be $11.20, and not $15.51, as computed by the court below, as a result of converting the respondent's salary to a per diem basis on a 260-day year (R. 14). The respondent would then be entitled to receive $5.60 additional pay for each of the 84 days' work in excess of 40 hours per week found by the court below to have been served by him as master, and not an additional $23.25 for each such day, as determined by the court below. Similar reductions would be required as to the other parts of the claim period.

The propriety of applying the terms of the 1906 Act to the respondent, if he comes within Section 23, can be illustrated by reference to the temporary war overtime legislation already discussed (pp. 32–41, *supra*). Each of these acts, in conferring overtime privileges, applies the formula of the 1906 Act to determining overtime pay for any

monthly employees. See Act of June 28, 1940, Sec. 5 (a) (*supra*, p. 32); Act of October 21, 1940 (*supra*, p. 34); Act of June 3, 1941 (*supra*, pp. 35–36); War Overtime Pay Act of 1943, Sec. 2 (*supra*, p. 38); Joint Resolution of Dec. 22, 1942 (*supra*, pp. 36–37). Congress has never authorized deviation from the 360-day basis set forth in the Act of June 30, 1906, *supra*, as the method for determining fractional compensation of monthly or annual employees. See page 17, *supra*.

We submit, therefore, that, even if Section 23 is held to be applicable to the respondent, the decision of the Court of Claims should be reversed in so far as the method of computing the respondent's overtime compensation is concerned, and this Court should direct that such computation be made to conform with the Act of June 30, 1906, *supra*.

CONCLUSION

It is respectfully submitted that the judgment below should be reversed.

CHARLES FAHY,
Solicitor General.
FRANCIS M. SHEA,
Assistant Attorney General.
DAVID L. KREEGER,
Special Assistant to the Attorney General.
ENOCH E. ELLISON,
SAMUEL D. SLADE,
JULIAN R. WILHEIM,
Attorneys.

NOVEMBER 1944.

APPENDIX A

HEARINGS BEFORE THE SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS, UNITED STATES SENATE (PP. 59–61), SEVENTY-THIRD CONGRESS, SECOND SESSION, ON H. R. 6663.

January 17, 1934.

STATEMENT SUBMITTED BY N. P. ALIFAS, PRESIDENT DISTRICT NO. 44, INTERNATIONAL ASSOCIATION OF MACHINISTS, AND REPRESENTING THE METAL TRADES' DEPARTMENT OF THE AMERICAN FEDERATION OF LABOR

On behalf of the 75,000 or more per diem mechanics and workmen employed at the navy yards, arsenals, the Panama Canal Zone, and numerous other divisions of the Federal service, whose wages are set by wage boards or similar wage-fixing authorities, I desire to urge your committee to eliminate from the economy section of the independent offices appropriation bill now under consideration all items which reduce the pay of these employees; and to repeal all those sections of current economy legislation which reduces pay.

Among the items referred to, are the 15-percent congressional cut which expires on June 30, 1934; the prohibition against automatic and administrative promotions which seriously adversely affect our apprentices and employees who have been reemployed at the same trade at lower rates of pay; and furloughs.

In addition to the loss of the 15-percent congressional cut, the navy-yard employees in particular have had their hours reduced to an average of 40 per week, by making every alternate Monday a nonwork day without pay. This furlough has practically become the permanent policy of the Navy Department, and results in a permanent reduction of over 22 percent in the base pay of these employees.

During the life of the current economy legislation, thousands of mechanics and workmen who received the first-class rate of pay, were discharged due to lack of work and lack of funds, and upon being reemployed, were accorded only the second- or third-class rate. In many trades approximately one third of the men were returned to work at the third-class rate, which in the case of a mechanic whose base rate is 88 cents per hour, results for that class of workmen in a total reduction in pay of 30.9 percent, while other divisions of the Federal service were suffering only a reduction of 15 percent.

During the last session of the Seventy-second Congress, President Hoover recommended the reconvening of wage boards with the understanding that mechanics and other workmen coming under them should be reduced 30 per cent. Congress declined, and very properly, to cut these employees to any greater extent than the cut imposed on other employees.

During the last session of the present Congress this group of employees was again saved by Congress from a more serious cut than others sustained; and they were limited to 15 percent, the same as others.

Notwithstanding this determined attitude upon the part of Congress to place all Government employees, officers, and officials upon an equality as to pay cuts, administrative measures have since then been taken to impose an additional 7-percent cut on all navy-yard employees by cutting the hours without a corresponding increase in pay, and an additional 15.9 percent cut to a very large proportion of them, by reemploying them at lower rates of pay.

In addition to these more or less permanent reductions in pay for per diem employees, thousands of them have been furloughed without pay for protracted periods; and in some instances they have been furloughed for one third of the time for an entire year, involving a reduction in pay of 43 percent.

In the navy-yard service a splendid 4-year apprenticeship system exists. Each apprentice is required to pass an examination annually for the purpose of disclosing his increased knowledge of the trade and his progress in the apprenticeship school. If he passes the examination, he is advanced to a higher grade, and his pay is increased. The economy law, prohibiting promotions, has barred these apprentices from just compensation as workmen. This should be restored to them.

In like manner, under our efficiency system, employees are presumed to be promoted to higher rates of pay in accordance with their improved efficiency. This, too, has been eliminated by the prohibition against administrative promotions.

In the event your committee decides to eliminate the entire 15-percent pay cut, it is respectfully suggested that language be inserted in lieu of what

is now carried in the bill which will protect these employees against wage cuts by wage boards which, it is presumed, will be immediately convened in the event Congress eliminates the pay cut.

The following language we believe would serve this purpose:

> *Provided*, That the rates of compensation for the several trades and occupations, which are set by wage boards or other wage-fixing authorities, shall be reestablished and maintained at rates not lower than the respective wage schedules in effect on June 1, 1932; and that the Navy Department and other departments and independent establishments of the Government are hereby directed to restore to employees any reduction in pay which they have received since June 30, 1932, in addition to the 15 percent Congressional cut, without increasing the present hours of service; and that the respective departments and independent offices are hereby authorized to incur such deficiencies as may be necessary to put this provision into effect.

It will be noted that the proposed amendment above quoted, establishes the present basic-wage schedules as the minimum, making it possible for wage boards to grant increases beyond this point. This feature does not give these employees any special advantage above what they have had heretofore. We feel that the administrative officials of the departments, in conformity with their past practices, will not be more generous than the law required. While in some divisions of the service, administrative officials grant increases to the limit of their authority, this does not appear to be true

in our division of the service, which we maintain requires protection only against unfair and administrative reductions in pay.

In view of the prospective increase in the cost of living, and in conformity with the policy of our Government under the N. R. A., to reduce hours and increase purchasing power, we respectfully submit that the request here made is exceedingly moderate. The fear we entertain that wage boards, if convened, will cut wages is by no means based upon the belief that such reduction in pay would be justified; but such economies we fear are likely to be effected as means by which departments may balance their budget, by subjecting these mechanics and laborers to sustain the burden of such economies.

In a general way, it might be said that all wages and salaries of Government employees and officials were originally based upon the approximate pay which such individuals would receive in private life. Unfortunately, the wage boards under the law would be compelled to put any reduction in the prevailing rate into effect for the per diem employees; while at the same time, it might be found that a similar reduction in pay in private industry would be shown for other salaried officers and employees, if they were subjected to a wage survey. In view of the fact that Congress has decided that other officials, officers, and employees should be treated alike in the matter of wage cuts and, we hope, in the matter of wage restoration, there is no good reason why a special group of employees, the per diem employees in this instance, should be subjected to any greater

cut or any greater limitation in restoration of their pay than other officials, officers, and employees of the Government.

We trust that your committee will keep the interests of these highly skilled mechanics and workers in mind, in reaching your decision regarding the economy features of the bill.

APPENDIX B

TREASURY DEPARTMENT
BUREAU OF ENGRAVING AND PRINTING
Washington 25, D. C.

NOVEMBER 3, 1944.

MY DEAR MR. SHEA:

This letter is in response to your telephone request of yesterday for a statement showing the method of computing the compensation of employees paid on a monthly or annual basis during the years 1931 and 1932, and whose compensation was fixed by a wage-fixing authority.

During the years of 1931 and 1932, this bureau had a number of employees in its service whose compensation was fixed by a wage-fixing authority, and who were paid on a monthly or annual basis. All of these employees were required to work more than forty hours a week as the bureau, during these years, was operating five and one-half days, or forty-four hours a week. Some of these employees, on occasions, were required to work more than eight hours in one day. In no instance, however, were any of these employees on a per annum basis paid for overtime. The per diem employees, during these two years, were paid time-and-a-half for time worked in excess of eight hours a day.

The announcements of the United States Civil Service Commission of examinations for positions paid on a monthly or annual basis, and the letters of appointment, stated the annual salaries with

no reference to pay for overtime. In the case of per diem positions, the regular rates and the overtime rates were stated.

Very truly yours,

A. W. HALL,
Director.

Honorable FRANCIS M. SHEA
Assistant Attorney General
Washington 25, D. C.

APPENDIX C

Address Reply To
The Secretary of the Navy
and refer to initials
and no.
PS&M–1a–McP:bjs

NAVY DEPARTMENT,
Washington, 4 November 1943.

MR. WILLIAM M. WHITMAN,
% Chief of Office, Panama Canal,
411 Tenth Street NW., Washington, D. C.

DEAR SIR: Reference is made to your recent telephone call requesting information as to whether overtime has been paid under the provisions in Section 23 of the Independent Offices Appropriation Act of 1935, passed March 28, 1934 to civil employees of the Navy Department who are paid on a per annum basis and who are not within the purview of the Classification Act of 1923 as amended.

These employees, which numbered approximately 6,000, have not been paid overtime under the above cited statute. A large number of these employees have been transferred from a per annum to a per diem basis. Those continued on a per annum basis are now paid overtime under the following provision in Section 1 of the "War Overtime Pay Act of 1943" approved May 8, 1943:

> * * * That this Act shall apply to all civilian officers and employees (including officers and employees whose wages are

fixed on a monthly or yearly basis and adjusted from time to time in accordance with prevailing rates by wage boards or similar administrative authority serving the same purpose * * *) * * *.

Very sincerely,

[S] CHARLES PIOZET,
Charles Piozet,
Director of Civilian Personnel.

UNITED STATES GOVERNMENT
PRINTING OFFICE,
Washington 25, D. C., March 22, 1944.

The ATTORNEY GENERAL,
Department of Justice,
Washington 25, D. C.

DEAR SIR: There has been received your letter dated March 20, 1944, (File—FMS:JRW C. Cls. #45097) in which desire is expressed for this office to furnish information in reply to questions stated.

The questions are answered in the order presented as follows:

(1) The Government Printing Office has employees hired and paid on an annual basis whose compensation is fixed by wage boards or other wage fixing authorities since March 28, 1934.

(2) Such employees have been directed to work and have worked in excess of 40 hours per week since the effective date of the statute.

(3) Such employees have not been paid overtime compensation for work in excess of 40 hours per week pursuant of the provisions of the statute that "All overtime should be compensated for at the rate of not less than time and one-half." The

reason for such action is contained in a decision of the Comptroller General of the United States (13 CG 265) which states in part, that employees paid on an annual basis who may be required to work more than 40 hours per week are not entitled to overtime.

Very truly yours,

A. E. GIEGENGACK,
Public Printer.

By (Signed) F. E. CHRISTOFANE,
Comptroller.

TREASURY DEPARTMENT,
BUREAU OF ENGRAVING AND PRINTING,
Washington 25, D. C., March 22, 1944.

Honorable FRANCIS M. SHEA,
Assistant Attorney General,
Washington 25, D. C.

MY DEAR MR. SHEA: Receipt is acknowledged of your letter of March 20, 1944, regarding the matter of overtime pay for work in excess of 40 hours per week with respect to employees paid on a monthly or annual basis whose compensation is fixed by wage boards or other wage-fixing authorities.

In reply to the questions contained in your letter, you are advised that this bureau had on March 28, 1934, and until August 1, 1942, a number of employees in the service whose compensation was fixed by a wage-fixing authority and who were paid on an annual basis. Some of these employees were, on occasion, required to work more than 40 hours per week. However, in no instance

were any of these per annum employees paid time-and-a-half for such overtime.

Very truly yours,

(Signed) A. W. HALL,
Director.

NAVY DEPARTMENT,
Washington, D. C., April 4, 1944.

CHIEF OF OFFICE,
Panama Canal, Washington, D. C.

DEAR SIR: Reference is made to your letter of March 21, 1944, requesting that you be advised whether or not civilian employees of the Navy Department whose wages are fixed by "wage boards or other wage-fixing authorities" on a monthly or per annum basis have been required to work in excess of forty hours per week after the date of the enactment of Section 23 of the Independent Offices Appropriation Act of 1935 (March 28, 1934), and if so, whether any overtime compensation has been paid to such employees under the provisions of that section.

The civilian employees of the Navy Department referred to above have been required to work in excess of forty hours per week after the date of the enactment of the cited statute and no overtime compensation has been paid to such employees under the provisions of that statute.

Very sincerely,

RALPH A. BARD.

APPENDIX D

WAR DEPARTMENT
Washington, April 8, 1944.

MR. B. F. BURDICK,
Chief of Office, The Panama Canal,
Washington 25, D. C.

DEAR MR. BURDICK: This is in reply to your letter of March 21, 1944, in which you request additional information regarding the payment of overtime compensation to monthly and per annum employees under the Act of March 29, 1934.

In view of the fact that your office has indicated a desire for an early reply in this matter, it has not been possible to gather complete and adequate information from the operating elements of the War Department. It can be stated, however, that this Department has never adopted the practice of paying overtime compensation under the 1934 law to any employees other than those paid on a daily or hourly basis. It is also true that employees paid on a per annum or monthly basis whose rates of compensation were not fixed in accordance with the Classification Act of 1923, as amended, have been required to work in excess of 40 hours per week. In the period immediately preceding the entry of the United States into the present war, it was a general practice to require ungraded employees, not covered by the Act of March 28, 1934, to work five and one-half days per week or a total of 44 hours per week. Effective January 9, 1942, the Department adopted a

48 hour week and ungraded employees paid on a per annum basis have, since that date, worked six eight-hour days.

In this connection, however, it is felt that a consideration is involved which was not brought out in the decision of the Court of Claims to which you refer. Although this Department was, of course, influenced by the decision of the Comptroller General, holding that per annum employees were not entitled to overtime under the law in question, the further matter of wage board procedure was also involved. In a number of instances, the Comptroller held that the wage fixing procedure followed by the Air Corps, the Engineer Department, and other elements of this Department did not meet the statutory requirement of "wage boards or other wage-fixing authorities" (see Comp. Gen. 486; 14 *id.* 552). In view of the above, it would appear that the War Department is in a different position from your organization with respect to the decision in the *Townsley* case, inasmuch as the wage fixing practice has been held not to meet the statutory requirement. It was not until the early part of 1943 that a general and formal wage board procedure was adopted for ungraded employees as a whole.

If the Department can be of further assistance to you in securing more detailed and specific data from the Forces and Technical Services, please be assured of our complete willingness to do so.

Sincerely yours,

(Signed) JOHN W. MARTYN,
Administrative Assistant.

APPENDIX E

BALBOA HEIGHTS, C. Z.,
May 8, 1935.

The Honorable SCHUYLER OTIS BLAND,
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives, Washington, D. C.

DEAR MR. BLAND: I have received your letter of April 22d concerning Panama Canal legislation and I appreciate greatly the prompt consideration which your Committee is giving these matters.

As concerns H. R. 6719 to amend the Canal Zone Code, which was introduced by you and which you state has recently been reported favorably, I have just learned that effort will probably be made by the Washington legislative representatives of local organized labor groups to secure an amendment to section 2 of the bill which would have the effect of incorporating into the Canal Zone Code the 40-hour week provision of the so-called Thomas Amendment to the Independent Offices Appropriation bill for 1935 (48 Stat. 522).

The purpose of section 2 of H. R. 6719 is to confirm the general authority which has always been exercised by the President in the matter of fixing the salaries and conditions of employment of the personnel of the Canal organization within the limits prescribed by Congress. The proposed legislation was made necessary by a recent ruling of the Comptroller General denying the power of the President, in the absence of specific statutory

authority, to establish rules governing the commutation of leave of certain employees. The proposed section is designed to cover specifically all those matters relating to conditions of employment with respect to which it may fairly be assumed that the Comptroller General might rule similarly.

It is my opinion that it would be entirely inconsistent in confirming the general authority of the President for fixing the conditions of employment of Canal personnel to impose such a restrictive provision as that embodied in the Thomas Amendment. Particularly does this seem to be true when it is considered that the Thomas Amendment is general legislation of the United States which is not applicable to American employees of the Canal generally and affects only a certain number of employees in particular groups solely by reason of a ruling to that effect by the Comptroller General. Furthermore, it freezes the salaries as well as the hours of work of the particular employees to which it applies, which is of course inconsistent with the general purpose of the proposed legislation.

It should be noted that the enactment of section 2 of H. R. 6719 will not revoke the provisons of the Thomas Amendment. It will, however, leave it within the discretion of the President to determine the working hours of all employees of The Panama Canal; and the President might, if he so desired, establish a 40-, 44-, or 48-hour week for all employees of The Panama Canal if he considers it advisable to do so. In the absence of affirmative action by the President, however, no changes in working hours would be made. It is important that the hours of work among the several classes

of Americans on the Canal Zone be coordinated and that of course can best be done here where all conditions are known, but it is more important that general legislation for the United States be applied only with great care to the Panama Canal because of the many special conditions of employment here. For instance, the limitation of 40-hours of work per week has been extended to men here who already had very generous annual vacation allowances necessary in this climate to permit trips to a temperate climate for recuperation, with the result that our 40-hour men work only about 1717 hours per year on the average as compared to 1857 hours for Government men enjoying the 40-hour week in the United States.

The foregoing is submitted in order that you may be informed as to the views of the Canal administration if an amendment along the lines suggested is offered.

Very sincerely yours,

J. L. SCHLEY,
Governor.

THE PANAMA CANAL,
WASHINGTON OFFICE,
Washington, June 11, 1935.

Honorable THOMAS P. GORE,
Chairman, Committee on Interoceanic Canals,
United States Senate, Washington, D. C.

MY DEAR SENATOR GORE: Governor Schley has informed this office by radio that he has learned that effort may be made to secure an amendment to Section 2 of bill H. R. 6719 "To amend the Canal Zone Code", which would have the effect of

incorporating into the Canal Zone Code the 40-hour week provision of the so-called Thomas amendment to the Independent Offices Appropriation Act for 1935 (48 Stat. 522).

The Governor is very much opposed to any such amendment to the bill as it passed the House for the reason, as he states, such an amendment would place a wholly inconsistent restriction on the general power of the President to fix the conditions of employment for all employees of The Panama Canal by granting entirely unjustified treatment to a certain group of employees which would be highly discriminatory.

The following explanation of the purpose of Section 2 of H. R. 6719, and the reasons why it is considered undesirable to permit the making of any amendment thereto, are stated in a letter which the Governor sent to Congressman Bland, Chairman of the Committee on Merchant Marine and Fisheries of the House, as follows:

> The purpose of section 2 of H. R. 6719 is to confirm the general authority which has always been exercised by the President in the matter of fixing the salaries and conditions of employment of the personnel of the Canal organization within the limits prescribed by Congress. The proposed legislation was made necessary by a recent ruling of the Comptroller General denying the power of the President, in the absence of specific statutory authority, to establish rules governing the commutation of leave of certain employees. The proposed section is designed to cover specifically all those matters relating to conditions of employment with respect to which it may fairly be

assumed that the Comptroller General might rule similarly.

It is my opinion that it would be entirely inconsistent in confirming the general authority of the President for fixing the conditions of employment of Canal personnel to impose such a restrictive provision as that embodied in the Thomas Amendment. Particularly does this seem to be true when it is considered that the Thomas Amendment is general legislation of the United States which is not applicable to American employees of the Canal generally and affects only a certain number of employees in particular groups solely by reason of a ruling to that effect by the Comptroller General. Furthermore, it freezes the salaries as well as the hours of work of the particular employees to which it applies, which is of course inconsistent with the general purpose of the proposed legislation.

It should be noted that the enactment of section 2 of H. R. 6719 will not revoke the provisions of the Thomas Amendment. It will, however, leave it within the discretion of the President to determine the working hours of all employees of The Panama Canal; and the President might, if he so desired, establish a 40-, 44-, or 48-hour week for all employees of The Panama Canal if he considers it advisable to do so. In the absence of affirmative action by the President, however, no changes in working hours would be made. It is important that the hours of work among the several classes of Americans on the Canal Zone be coordinated and that of course can best be done here where all conditions are known, but it is more important that general legislation for the United States be applied only

with great care to the Panama Canal because of the many special conditions of employment here. For instance, the limitation to 40-hours of work per week has been extended to men here who already had very generous annual vacation allowances necessary in this climate to permit trips to a temperate climate for recuperation, with the result that our 40-hour men work only about 1717 hours per year on the average as compared to 1857 hours for Government men enjoying the 40-hour week in the United States.

It is very desirable to have this bill passed before July 1st, which is the date beyond which the Comptroller General has stated he is not willing to permit the making of commuted leave payments without additional legislative authority.

In his radio of this date the Governor requested this office "to endeavor to persuade Senator Gore to secure most expeditious consideration of bill."

Early action on this bill is very much desired. There are no controversial matters contained in the bill and its purposes are fully explained in House Report No. 744.

Very respectfully,

A. L. FLINT,
Chief of Office.

THE PANAMA CANAL,
WASHINGTON OFFICE,
Washington, July 1, 1935.

Honorable THOMAS P. GORE, *Chairman,*
Committee on Interoceanic Canals,
United States Senate,
Washington, D. C.

MY DEAR SENATOR GORE: Following the telephone conversation between Miss Flint of your office and Mr. Smith of this office in regard to bill H. R. 6719 "To amend the Canal Zone Code," which has passed the House and is now before your Committee, a radiogram was sent to the Governor of The Panama Canal last Saturday, submitting to him the proposition of redrafting Section 2, so as to specify in the law the conditions of employment, etc., of Canal personnel in order to eliminate the objections growing out of the proposed grant of power in this regard to the President.

The Governor has replied in the following radiogram addressed to you:

> It seems quite impracticable and entirely undesirable to endeavor to redraft Section 2 of H. R. 6719 so as to specify general conditions of employment for Canal personnel. Because of different classes of personnel, including large element of tropical labor, and many other factors arising from local conditions, these conditions of employment as embodied in Executive Order Number 1888 of February 2, 1914, as amended, are necessarily voluminous and are almost altogether of a purely administrative nature which are not adaptable to enunciation in statutory form. May I state that Sec-

tion 2 does not grant any additional administrative powers as the President since the Spooner Act of 1902 has exercised complete authority with respect to conditions of employment here and although this authority has been exercised more than 30 years it was only recently that Comptroller General questioned authority respecting commutation of leave and merit of this decision seems highly debatable in view of decision of Supreme Court in McConaughey versus Morrow.

May I also point out that the legislative policy is well established of granting reasonably broad powers to the President in administrative matters relating to the Panama Canal. Particular reference is made to Sections 4, 5, 7, 8, 9, 51, 61, 81, 141, 153, 272, 321, 371, 401 of Title 2, Canal Zone Code, whereby Congress has delegated to the President or to the Governor wide authority with respect to administrative matters concerning which it was deemed inexpedient for Congress to legislate in detail, particularly in view of quickly changing local conditions. Most of these provisions have been in effect for many years and I am satisfied that long experience has shown that this general policy should be continued.

Section 3 of the bill merely includes in the local law a proviso which appears in the general retirement law of the United States which for some unexplainable reason was omitted when the local law was drafted. I consider it entirely reasonable on ground that employees serving here in tropics should not be in less favorable position as to disability retirement than those in United States.

Sections 4 to 7 accomplish only one change and that to permit refund of retirement deductions be made direct to named beneficiary rather than to estate of deceased employee thus simplifying matters for all concerned. Absolutely no additional expenditures are involved and the provisions are identical in substance and form with similar amendments to general retirement law by Act of June 22, 1934.

Particular care was exercised in drafting this bill to avoid the inclusion of matters which might possibly create legislative controversy and to confine the proposed amendments to those which experience had demonstrated to be necessary to correct minor defects which had been discovered in Canal Zone Code and to bring special legislation for Canal Zone into harmony with recent amendatory enactments applicable to United States generally.

I sincerely hope you may find it possible to report bill without substantial change.

The decision of the Supreme Court to which reference is made, *McConaughey* v. *Morrow,* is found in United States Reports, Volume 263, page 39. As Mr. Smith has advised you, the Comptroller General, in holding in his decisions of December 8, 1934, and February 12, 1935, that the making of commuted leave payments is not authorized, stated that he would make no objection to permitting these payments to continue until July 1, 1935. The Comptroller General's decision of February 12, 1935, closes with the following statement:

In view of the extended period over which the erroneous administrative practice has

prevailed no objection will be raised in the audit of the accounts to payments made prior to July 1, 1935 under such procedure and in connection with separations hereafter occurring or that occurred since date of decision, December 8, 1934, where it is shown that it was impossible to grant the accrued leave prior to the separation date in the particular case.

It is for this reason especially that it has been considered essential to urge the enactment of this legislation at the earliest practicable date.

Very respectfully,

A. L. FLINT,
Chief of Office.

THE PANAMA CANAL,
WASHINGTON OFFICE,
Washington, April 14, 1936.

Honorable F. RYAN DUFFY,
United States Senate,
Washington, D. C.

MY DEAR SENATOR DUFFY: The Governor of The Panama Canal has just radioed the following message to this office for transmission to you:

I greatly appreciate your having reported H. R. 6719 and H. J. Res. 412. I consider the provisions of these bills of sufficient importance in administration of Panama Canal affairs to warrant a personal appeal to you to endeavor to secure favorable consideration during short time remaining in present session.

The fourteen sections of H. R. 6719, which passed House June 3rd, 1935, provide relatively minor changes in Canal Zone

Code which was enacted in 1934. Most important provision is that which confirms authority exercised by President since 1904 to make regulations establishing conditions of employment for Panama Canal personnel. Comptroller General held in one typical case that such authority must be specifically delegated by Congress, and that a certain regulation was invalid in absence of such delegation of authority. Although Attorney General in recent review of situation confirmed Canal Administration's view that said regulation was within scope of President's authority, Comptroller General adhered to his original ruling, and the enactment of H. R. 6719 is therefore necessary. The legislation will have effect merely of ratifying regulations heretofore prescribed by President and which have been in effect since 1914 and no new privileges are granted thereby and no additional expenditures incurred.

Sections 3 to 7 of the bill will have effect of incorporating in laws relating to retirement of Canal employees on Isthmus certain provisions of general laws relating to retirement of Government employees in United States. These amendments are proposed because local retirement law was patterned on law in effect in the United States as to its general provisions and it is felt that employees serving here in tropics for long periods should not be in a less favorable position as to retirement than employees in Government service in United States. Sections 4 to 7 are identical in form and substance with similar amendments recently made in general law, and merely provide administrative changes involving no expenditure of funds whatever. Section 3 re-

stores to local law a proviso which appears in general law but which for some unexplainable reason was omitted when local law was drafted.

I think there is no controversy whatever as to other provisions of bill and I wish to assure you that particular care was exercised in drafting bill to avoid the inclusion therein of matter which might create legislative controversy and to limit the amendments to those which experience has demonstrated to be necessary at this time.

Having in mind the splendid assistance given by you in behalf of tolls bill and the time and effort devoted by you to that measure I greatly dislike disturbing you with this relatively inconsequential matter but enactment of this bill will be of such material assistance to Panama Canal administratively that I feel justified in soliciting your further assistance. House Report 744 contains rather full explanation of various provisions of Bill. The Washington office can furnish any further information which may be required.

As stated in the Governor's message, this office will be glad to furnish any additional information concerning these bills which may be required.

Very respectfully,

A. L. FLINT,
Chief of Office.

THE PANAMA CANAL,
WASHINGTON OFFICE,
Washington, April 16, 1936.

Honorable F. RYAN DUFFY,
United States Senate,
Washington, D. C.

MY DEAR SENATOR DUFFY: Supplementing the radiogram of April 13, 1936, from the Governor of The Panama Canal, relative to H. R. 6719, to amend the Canal Zone Code, quoted in my letter to you under date of April 14, 1936, there is quoted below another radiogram from the Governor, dated April 15, 1936, on this subject, which the Governor has requested be transmitted to you:

> Delegation from Panama Metal Trades Council called on me yesterday and requested assurance that Section 2 of H. R. 6719 if enacted would not be interpreted by me as having adverse effect on continuance of 40-hour week for mechanical trades which was brought about by application of so-called Thomas Amendment, Section 23 of Independent Offices Act of 1935, to some 900 out of about 3,000 American employees of Canal.
>
> Delegation was informed that I could not at this time commit Canal Administration concerning administrative questions which might arise if Bland Bill were enacted but that the long record of successive Canal administrations for fair dealing in employee relations should make it unnecessary for Governor to state specifically what action would be taken in particular contingencies which might arise in future. General policy has been and will continue to be to take generous view with reference

to justifiable special employment privileges as necessary compensation for special conditions arising out of service in tropics with Panama Canal. Fixed policy also is to keep abreast of policies of national administration in all matters relating to improved employment conditions for Government workers.

Meeting of Metal Trades Council last night decided to send Wahl as legislative representative to Washington to secure amendment to H. R. 6719 which would have effect of incorporating Thomas Amendment in Canal Zone Code. If desired amendment cannot be secured it is intimated that efforts will be made by Metal Trades to defeat consideration of bill in present session.

Section 2 of the bill was drafted at my direction after the Comptroller General had held that accumulated leave of Canal employees might not be commuted into cash after June 30th, 1935 and unusual efforts were made by me to secure the enactment of this provision prior to July 1st, 1935 so that no employees whose services were terminated might be deprived of privilege of having his leave commuted into cash. The section was drafted in broad terms so that there would remain no doubt of the validity of other regulations of the President granting important privileges to Canal employees because of service in tropics.

I should consider it most unfortunate if the application of the Thomas Amendment to a selected group of Canal employees should be incorporated in the bill as an amendment to section of Canal Zone Code which is designed to apply to all employees. The authority with which H. R. 6719 vests

the President is precisely the authority which has continuously been exercised by him since 1903 and it would be wholly inconsistent to restrict the exercise of this authority as to a special group of employees.

I desire to emphasize that Section 2 of H. R. 6719 will not revoke the provisions of the Thomas Amendment, which is a general law not specifically made applicable to the Canal Zone. Thomas Amendment, regardless of regulations which may be made by President for Canal Zone, will remain in effect in United States and establish conditions of employment for certain Government workers there which will be reflected in conditions of employment prescribed for similar employees of Panama Canal.

Very truly yours,

A. L. FLINT,
Chief of Office.

APPENDIX F

WAR DEPARTMENT,
Washington, March 31, 1937.

The SPEAKER, THE HOUSE OF REPRESENTATIVES,
Washington, D. C.

DEAR MR. SPEAKER: There is transmitted herewith draft of bill to amend the Canal Zone Code. The purposes of and the need for the enactment of the proposed legislation have been stated by the Governor of The Panama Canal as follows:

> The proposed bill contains three sections which provide changes in or additions to the Canal Zone Code. This legislation is proposed in the form of amendments to the Canal Zone Code for the reason that the several provisions are of local application only. A review of the several sections follows:
>
> * * * *Section 3.* Section 3 of the bill prescribes an amendment to section 81 of Title 2 of the Canal Zone Code relating to the appointment, removal and compensation of persons necessary for the operation and maintenance of the Canal. The section as amended will make no change in existing law except to add to the last paragraph a provision confirming the authority which from the beginning of the construction of the Panama Canal has been exercised by the President with respect to the establishment of conditions of employment for employees of the Canal organization. While the Attorney General of the United States has specifically held that the President is already vested with authority to establish

conditions of employment for the Canal service the Comptroller General, in a decision concerning the legality of regulations prescribed by the President relating to the commutation of leave for employees of the Canal organization, has held the exercise of such authority to be invalid without specific statutory authority.

The proposed section is similar to section 2 of H. R. 6719 introduced by Mr. Bland in the House on March 14, 1935. It will be recalled that H. R. 6719 contained some fourteen amendments to the Canal Zone Code and was finally enacted on June 24, 1936. Section 2 of the bill was objected to in the Senate, after having been adopted by the House, and in the subsequent conference between the House and the Senate the section was eliminated.

As stated in Report No. 744, 74th Congress, 1st Session, the purpose of the amendment provided by this section is not to vest powers which he has exercised continuously with respect to the conditions of employment for Canal personnel under the original authority contained in the Panama Canal Act of August 24, 1912, and heretofore considered confirmed in the decision of the United States Supreme Court in the case of *McConaughey* vs. *Morrow*, 263 U. S. 39, but questioned by the Comptroller General in his decisions dated December 8, 1934, and February 12, 1935 (A–57620), applying to the payment of commutation of leave for employees.

The objection was made when this amendment was previously considered that the specific grant of authority to the President to prescribe regulations concerning office hours and hours of labor might be inter-

preted as permitting the President by Executive Order to annul the application of the provisions of the Thomas Amendment prescribing a 40-hour work week for certain Canal employees. In order to remove any doubt as to the effect the proposed amendment would have upon the application of the provisions of the Thomas Amendment there has been added at the end of the section the following:

"And provided further, That nothing contained in this section shall affect the application to employees of The Panama Canal of the provisions of Section 23 of the Independent Offices Appropriation Act, 1935, 48 Stat. 522."

It is understood that all objections which previously have been made to the enactment of this section have been withdrawn and that no further objections will be offered.

The draft of bill attached was prepared under the direction of the Governor of The Panama Canal after extensive studies had been made of the subject matter and it is recommended that this legislation be given favorable consideration.

You are advised that the proposed legislation is in accord with the program of the President.

Very respectfully,

Secretary of War.

(In duplicate.)

Enclosure: Draft of bill.

U. S. GOVERNMENT PRINTING OFFICE: 1944

No. 134

IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

UNITED STATES, *Petitioner*

v.

LOUIS TOWNSLEY.

BRIEF OPPOSING THE GRANTING OF PETITION.

HERMAN J. GALLOWAY,
FRED W. SHIELDS,
Attorneys for Respondent.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 134.

UNITED STATES, *Petitioner*

v.

LOUIS TOWNSLEY.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

OPINION BELOW.

The opinion of the Court of Claims (R. 14-29) has not yet been officially reported.

JURISDICTION.

The judgment of the Court of Claims was entered on March 6, 1944 (R. 29). The petition for Writ of Certiorari was filed on June 6, 1944. The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925, as amended.

QUESTIONS PRESENTED.

(1) Whether Section 23 of the Act of March 28, 1934, providing for overtime compensation for services performed in excess of 40 hours per week, applies to Government employees whose compensation is fixed by "Wage

boards or other wage-fixing authorities" on a monthly basis.

(2) If the foregoing question is answered in the affirmative, whether the Court of Claims employed the proper method of determining the daily rate upon which overtime compensation is to be calculated.

STATUTES INVOLVED.

The pertinent portion of the statute involved is set forth in the Petition for Writ of Certiorari, (pages 2, 3), to which reference is hereby made.

STATEMENT.

The statement of facts contained in the Petition for Writ of Certiorari, (pages 4-6), fairly sets forth the facts in the case.

SUMMARY OF REASONS FOR DENYING THE WRIT.

The Writ of Certiorari should be denied because:

1. The decision by the Court of Claims is correct and sound.

2. The case does not involve questions of sufficient public importance to justify its consideration by this Court.

ARGUMENT.

1. It is respondent's position that Section 23 of the Act of March 28, 1934, c. 102, 48 Stat. 522 (5 U. S. C. 673c), limits the regular hours of labor of those Government employees whose wages or compensation is fixed by wage boards or other wage fixing authorities to forty hours per week, and provides overtime compensation for all work in excess of forty hours per week performed by such employees.

The language of Section 23 is clear and unambiguous, and the Court below, in upholding respondent's claim, gave

the language of the Section its obvious meaning in accord with the intent of the Congress as expressed by the words employed in the Statute. Therefore, under the well established rules of statutory construction, there is no reason to seek outside aid to determine the meaning and effect of Section 23. *Boudinot (Cherokee Tobacco)* v. *United States*, 11 Wall. 616, 620; *United States* v. *Lexington Mill Co.*, 232 U. S. 399, 409-410; *Caminetti* v. *United States*, 242 U. S. 470 485.

Petitioner does not contend that the language of Section 23 is not clear or ambiguous, nor does it dispute directly the statement of the Court below that the Act, on its face, is just as applicable to monthly employees as to any other employees. It does, however, ask this Court to refuse to give full effect to the Section because it contends, (a) the use of the words "weekly compensation" in the Section indicates that the Congress did not intend for the Section to apply to employees whose wages or compensation was fixed on a monthly basis, (b) the legislative history of the Section indicates that the Congress did not intend it to apply to monthly or annual employees, (c) the administrative practice is in accord with the construction for which it contends, and (d) the administrative practice was open and well known, and hence presumably was known to the Congress. Each of petitioner's contentions will be discussed separately.

a. Use of the words, "weekly compensation".

It is asserted by petitioner that the use of the words, "weekly compensation" in Section 23 indicates that the Congress did not intend the Section to apply to any employees other than those whose wages or compensation was fixed on an hourly or a daily basis. The weekly compensation of hourly and per diem employees, it is stated, is readily ascertainable, while the compensation of monthly and annual employees is not calculated on a weekly basis, and there is no statutory authority to do so.

The use of the words, "weekly compensation" is not significant. The purpose of Section 23 is to limit the hours of work and at the same time reestablish and maintain the same total compensation paid to employees in 1932. To accomplish this result both hours of labor and total compensation had to be expressed in some period of time. The period used was the week; it could as well have been the month. Had this latter period been used it could not seriously be contended that hourly and per diem employees were thereby excluded from the benefits of the Act.

Actually there are no "weekly" employees of the Government. To ascertain the weekly compensation of a per diem or an hourly employee a simple problem in multiplication is involved. To ascertain the weekly compensation of a monthly or annual employee a simple problem in division is involved. The use of the words, "weekly compensation" if indicative of anything, would seem to be that the Congress intended the Section to apply to all employees regardless of the basis upon which they received their compensation, for some mathematical computation is necessary in order to ascertain the weekly compensation of hourly, per diem and monthly employees.

The contention that there is no statutory authority for determining the weekly compensation of an employee paid by the month seems to conflict with petitioner's later argument to the effect that Section 6 of the Act of June 30, 1906, c. 3914, 34 Stat. 697 (5 U. S. C. 84), provides a method for determining the daily pay of such employees (p. 19 of petition for Certiorari).

Petitioner also urges that the discrimination between hourly and per diem employees on the one hand, and monthly or annual employees on the other, which it asserts the Congress intended to make in Section 23, is a reasonable one, for hourly and per diem workers do customarily receive overtime compensation while monthly and annual employees do not.

This contention is likewise refuted by its later argument that Section 6 of the Act of June 30, 1906, *supra*, provides

a method for computing the amount of overtime compensation for monthly and annual employees. If the Congress has, as petitioner contends, enacted a statute providing a method for computing the overtime compensation of monthly and annual employees, the practice of paying overtime to such employees can scarcely be said to be so unusual as to justify this Court saying that the Congress intended a discrimination on that account. In any event the question for the Court is not whether there is any good reason for making a discrimination between one class and others to which an act unquestionably applies, but whether, in fact, such discrimination was made. *Levy Court of Washington* v. *Ringgold*, 5 Pet. 451, 455.

Attention is also directed to the fact that the Congress, as early as 1888 provided overtime compensation to certain employees paid on an annual basis. The Act of May 24, 1888, c. 308, 25 Stat. 157, provided overtime compensation for letter carriers, paid on an annual basis. This Court upheld the claims of the letter carriers for the overtime compensation as provided by that Act. *Post* v. *United States*, 148 U. S. 124, affirming 27 C. Cls. 244.

From the foregoing it is obvious that there is nothing in the language of Section 23 which in any way indicates that the Congress intended to make the discrimination between hourly and per diem employees, on the one hand, and monthly or annual employees on the other, which petitioner contends should be made.

b. Legislative history of Section 23.

Petitioner next contends that the legislative history of Section 23 indicates that the Congress did not intend it to apply to monthly or to annual employees.

The only portion of the alleged legislative history relied upon by petitioner in support of this contention is that comprising a statement made by one N. P. Alifas, who appeared before a Senate Subcommittee of the Senate Committee which was considering the Bill which became the 1934 Act (H. R. 6663, 73rd Cong. 2d Sess., pp. 59, 61). Mr. Ali-

fas' statement appears in Appendix A to the petition for Certiorari.

Mr. Alifas purported to speak for some of the hourly and per diem employees of the Government. He proposed an amendment to the Bill which was intended to alleviate certain alleged injustices to such employees. His proposed amendment while similar in some respects to Section 23 as finally enacted, did not contain the *proviso* limiting the work week to forty hours and providing for overtime compensation. Moreover, it was not adopted by the Senate Committee.

Section 23 as finally enacted was offered as an amendment to the 1934 Bill by Senator Thomas (Cong. Rec., Vol. 78, Part 3, p. 2977, 73rd Cong., 2d Sess.). It was adopted and ultimately enacted by the Congress in the precise form in which he offered it. So far as appears the *proviso* to Section 23, originated with him, and there is absolutely nothing in any of the legislative history which indicates that he did not intend the *proviso* to apply to all employees whose wages or compensation was fixed by wage-boards or other wage fixing authorities.

c. The alleged well established administrative practice.

Petitioner, in this connection first asserts that the Act of March 3, 1883, c. 128, 22 Stat. 531, 563, as continued by Section 7 of the Act of March 15, 1898, c. 68, 30 Stat. 277, 316, (5 U. S. C. 29) prohibits the payment of overtime compensation to employees of the executive departments of the Government, for services in excess of the hours fixed by Statute.

Again this contention is in conflict with its later argument that Section 6 of the Act of June 30, 1906, *supra* provides a method for computing the overtime compensation of monthly and annual employees of the Government.

Or, if petitioner's contention be sound it would seem that the 1883 and 1898 Acts, would prohibit the payment of overtime compensation to those hourly and per diem employees to whom Section 23 admittedly does and has been applied.

The complete answer to this part of petitioner's argument is that Section 23 of the 1934 Act, specifically providing for overtime compensation to a certain class of Government employees, repeals, supersedes, or renders nugatory any earlier general legislation prohibiting the payment of overtime compensation to employees of the executive departments. *cf. United States* v. *California*, 297 U. S. 175, 188. Manifestly Congress can and does change existing laws from time to time to fit changing conditions.

Turning to the alleged administrative practice since 1934:

There is no showing made that the Governor of the Panama Canal ever determined whether Section 23 was or was not applicable to monthly employees. Such determinations as were made were made by the Comptroller General.* This Court has held that it will not look to such rulings for aid in the judicial interpretation of a statute. *Alaska S. S. Co.* v. *United States*, 290 U. S. 256, 264.

However, even if the opinions of the Comptroller General do constitute proper administrative practice, they do not support petitioner's contention. The Comptroller General has consistently held that Section 23 does not apply to monthly employees, and that such employees may not regularly be employed in excess of forty hours per week. 14 Comp. Gen. 156-165.

It is true that the Comptroller General has held that monthly and per annum employees, to whom Section 23 applies, are not entitled to overtime compensation, but he has consistently held that such employees must be placed on a forty hour week. Thus, in a decision addressed to the Public Printer, 13 Comp. Gen. 265, he states, p. 268:

> "* * * the regular hours of work of per annum employees within the terms of Section 23 of the Act of March 28, 1934, are required to be fixed at not to exceed 40 per week, * * *".

In the same decision, p. 270, he states in passing on the right of such employees to overtime compensation:

> "Question 6 is answered in the negative. The term 'overtime' has never been applicable to employees paid on an annual basis and there is no purpose or intent shown by Section 23 of the Act of March 28, 1934, to extend the right to overtime compensation to employees paid on an annual basis who may be required to work more than their regular tour of duty of 40 hours per week."

It is difficult to understand how Section 23 could be applicable to monthly and per annum employees so as to require them to be placed on a forty hour week, but inapplicable insofar as their right to overtime compensation for work performed in excess of 40 hours per week. The Section, it would seem, either was applicable to such employees, or it was not. If applicable at all then all of it, and not merely a part of it was applicable.

d. Congress' knowledge of the alleged administrative practice.

The allegedly well-known administrative practice here involved consists of a decision announced by the Comptroller General on April 12, 1934, and subsequently reaffirmed on August 25, 1934. The decisions in question are published in 14 Comp. Gen. 156. There is not one word in the record to show that the Congress knew of these decisions, or knew how Section 23 had been applied to employees of the Panama Canal.

Petitioner refers to the fact that in 1937 the Congress enacted the Act of June 9, 1937, c. 470, 50 Stat. 486, reaffirming the President's authority to fix salary, hours of labor and other conditions of employment of employees of the Panama Canal, and that while the legislation was pending, the Canal authorities objected to the inclusion of Section 23 of the Act of March 28, 1934, in the proposed Bill. In this connection they wrote to the Senate Committee considering the legislation, and noted that Section 23 affected a "special group of employees", only "some 900 out of about

3,000 American employees of Canal". The letters in question are printed as Appendix C to the petition for Certiorari, pp. 32-37.

It is from these letters that the Congress is presumed by petitioner to have knowledge of the manner in which Section 23 had been administratively applied on the Canal Zone, and its subsequent enactment of the Act of June 9, 1937, *supra*, containing Section 23 of the Act of March 28, 1934, petitioner contends, operates as a legislative ratification of that administrative application.

These letters actually inform the Congress of nothing whatsoever. The Canal authorities pointedly fail to state the classes of employees affected by Section 23, and so far as Congress knew all 900 of the employees affected could have been monthly or annual employees. It is likewise significant that the Canal authorities fail to mention the fact that it had continued to work its monthly employees on a 48 hour week, although the Comptroller General had specifically stated that such employees were to be placed on a 40 hour week. Re-enactment of Section 23 as a part of the Act of July 9, 1937, *supra*, manifestly can operate as Congressional approval of the administrative practice only if such administrative practice was known to the Congress. *Helvering* v. *New York Trust Co.*, 292 U. S. 455, 468. Here there is no affirmative showing that the Congress knew of the administrative practice, and circumstances indicate that it was actually misled with respect to such administrative practice.

It is doubtful whether the single decision of the Comptroller General, subsequently reaffirmed, can be said to establish a consistent, long continued administrative interpretation, in any event. This Court has indicated that it will not. *White* v. *Winchester Club*, 315 U. S. 32, 40. It has likewise held that a single decision by the Circuit Court of Appeals, followed by the codification of the laws does not engraft that interpretation of the law into the Code. *United States* v. *Raynor*, 302 U. S. 540, 551. And finally when the

law is clear and unambiguous the subsequent re-enactment of a statute does not constitute adoption of its administrative construction. *Iselin* v. *United States*, 270 U. S. 245, 251; *Wright* v. *United States*, 302 U. S. 573, 582.

Petitioner also calls attention to the fact that the Congress, during the present War Emergency, has enacted a number of Acts extending the payment of overtime compensation to Government employees. Petitioner contends that these Acts, and their legislative histories, indicate that the Congress in such Acts provided relief for monthly and per annum employees on the assumption that they did not receive overtime compensation under Section 23 of the Act of March 28, 1934.

The Acts in question are set forth in Appendix D to the petition for *Certiorari*, pp. 38-45. They need not here be discussed in detail. An examination of them will show that they contain overlapping provisions; many groups or classes of employees are entitled to overtime compensation under more than one of the Acts in question. Overtime compensation is provided in others for groups or classes already entitled to overtime compensation. For instance the Act of October 21, 1940, 54 Stat. 1205, provides overtime compensation to per diem and hourly employees, whose wages or compensation is fixed by wage boards or other wage fixing authorities, despite the fact that such employees admittedly are entitled to such overtime compensation under Section 23 of the Act of March 28, 1934. About all that the enactment of such legislation indicates is that, Congress, confronted with a grave emergency, intended to extend the payment of overtime compensation to all kinds and all classes of Government employees. The legislation was obviously enacted hurriedly, and in the face of a grave emergency. If indicative of anything it is only that the Congress was not too well aware as to what was the situation with respect to the payment of overtime compensation. The need for haste was apparent as it was essential that the services of Government employees be retained,

and without such legislation many would have left the Government to work in private industry under more favorable conditions of employment.

2. Method employed in computing respondent's overtime compensation.

To determine the amount of overtime compensation due the respondent the Court below multiplied his monthly compensation by 12 and divided the product by 52 to determine his compensation for a 40 hour week. His weekly compensation was then divided by 5 to ascertain his daily pay for an 8 hour day. One and one-half times this daily rate then represented one day's overtime compensation.

This method, petitioner contends, is erroneous. Its principal argument is based upon the fact that the Act of October 21, 1940, *supra*, which admittedly is broad enough to cover the respondent's employment, as well as that of numerous other classes of employees, provided for the payment of overtime compensation, which in the case of monthly employees was to be computed on a different basis from that employed by the Court below.

The Court below properly rejected this argument on the ground that a statutory method of computing overtime enacted in 1940 should not control compensation under a 1934 statute. As respondent's claim covers a period from 1934 to 1939 it is difficult to understand how the Court below could have ruled otherwise. Respondent's right to overtime compensation first accrued in 1934. Had his right then been recognized he would have received either the benefit of a 40 hour work week, or overtime compensation during the period from 1934 to 1939, and the 1940 Act, not having been enacted, manifestly could not control the computation of such overtime compensation.

The petitioner further contends that the method employed by the Court below does not follow settled administrative practice, nor does it give effect to the Act of June 30, 1906, *supra*.

The short answer to this contention is that petitioner has consistently, and even now urges that the settled administrative practice has been to deny overtime compensation to employees paid on a monthly basis. If the settled administrative practice has been to deny overtime compensation to such employees it is not understood just how there can be any settled practice with respect to the computation of overtime compensation for such employees. So far as the application of the Act of June 30, 1906, *supra*, is concerned it only provides a method for computing pay for fractional parts of a month for employees paid on a monthly or an annual basis. It makes no provision for the payment of overtime compensation to such employees, and it nowhere is suggested that it was intended to provide a method of computing overtime compensation.

This Court may also take judicial notice of the fact that, at the time the Act of June 30, 1906, *supra*, was enacted the work week for Government employees was 48 hours or more. Section 26 of the Act of March 28, 1934, shortened the work week for those employees whose compensation is fixed by wage boards or other wage fixing authorities to 40 hours. To that extent it certainly superseded the Act of June 30, 1906, and rendered it obsolete. It may here be suggested that the Comptroller General has held that, for the purpose of computing overtime compensation under the Act of June 28, 1940, c. 440, 54 Stat. 676, 678, a per annum employee receives his salary on the basis of a 5 day, 40 hour work week, and that such an employee is entitled to overtime compensation for work on Saturdays. 20 Comp. Gen. 39, 41. This ruling tacitly concedes that the Act of June 30, 1906, *supra* is no longer applicable once the Government has established a regular 40 hour work week.

The method employed by the Court below in computing the amount of respondent's overtime compensation is similar to the method employed in computing overtime compensation for monthly employees under the Fair Labor Standards Act of 1938 (Act of June 25, 1938, c. 676, 52 Stat.

1960). *Missel* v. *Overnight Motor Transportation Company* (C. C. A. 4th Cir.), 126 Fed. 2d 98, 109. See also 20 Comp. Gen. 39.

3. The importance of the question here presented.

Petitioner contends that the decision of the Court below, if allowed to stand will impose a considerable financial and litigation burden upon the Government. It refers to the fact that almost an hundred similar cases have already been filed with the Court below, seeking a recovery totaling approximately one million dollars. It speaks of more than a thousand additional claims which may be filed by Panama Canal employees, and intimates that the implications of the decision will extend to employees of the War and Navy Departments, the Bureau of Engraving and Printing and the Government Printing Office.

It, of course, is a matter of record that approximately 80 similar claims have been filed in the Court below. The total amount claimed in such cases probably amounts to close to one million dollars. However, the amount claimed in such cases is always generously estimated, and the actual amount recoverable in those cases is probably not more than three or four hundred thousand dollars.

Respondent's counsel can assert with considerable assurance that there are not one thousand or more potential claims to be filed by employees of the Panama Canal. Virtually the entire class of Canal employees who are affected by the decision of the Court below have already filed their claims, and it is believed that at most there are not more than fifty additional potential claims upon which there can be any recovery. The Court is well aware of the fact that, unless such claims have already been filed in Court, claim for compensation accruing prior to 1938 is already barred by the Statute of Limitations.

There has been no showing made that any appreciable number of monthly employees of the War and Navy Departments, the Bureau of Engraving and Printing and the

Government Printing Office have regularly been employed on a work week exceeding forty hours. Unless they have been so employed claims of such employees are not apt to be prosecuted in the Court of Claims. Further the War Department admits that Section 23 does not apply to its employees. See Appendix B to petition for Certiorari, pp. 29-31.

The decision of the Court below will obviously affect the disposition of cases already filed. There is no real likelihood of any substantial number of additional claims being filed. While the claims already filed do amount to a substantial sum of money, the decision below is so manifestly sound and correct that it does not require review by this Court. Certainly the mere fact that a substantial sum of money is involved does not make this question one of such public importance as will justify review by this Court.

CONCLUSION.

For the reasons stated, it is respectfully submitted that the petition for Certiorari should be denied.

HERMAN J. GALLOWAY,
FRED W. SHIELDS,
Attorneys for Respondent.

July, 1944.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 134.

UNITED STATES, *Petitioner*,

v.

LOUIS TOWNSLEY, *Respondent*.

On Writ of Certiorari to the Court of Claims.

BRIEF FOR THE RESPONDENT.

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BRIEF FOR THE RESPONDENT.

OPINIONS BELOW.

The opinions of the Court of Claims (R. 14-29) have not yet been officially reported.

JURISDICTION.

The original findings of fact and conclusions of law of the Court of Claims were entered on October 4, 1943 (R. 3). On March 6, 1944, the court overruled the Government's motion for a new trial, vacated its order of October 4, 1943, and entered new findings of fact and conclusions of law (R.

3-14, 29). The petition for a writ of certiorari was filed on June 6, 1944, and was granted on October 9, 1944. The jurisdiction of this Court rests upon the provisions of Section 3 (b) of the Act of February 13, 1925, as amended by the Act of May 22, 1939.

QUESTIONS PRESENTED.

The principal question is whether Section 23 of the Independent Offices Appropriation Act, 1935, in so far as it provides for overtime compensation for services in excess of 40 hours per week, applies to Government employees of the Panama Canal whose compensation is fixed by a wage-fixing authority on a monthly basis. If this question is answered in the affirmative, the further question presented is whether the Court of Claims employed the proper method for computing such overtime compensation.

STATUTE INVOLVED.

Section 23 of the Independent Offices Appropriation Act, 1935, approved March 28, 1934 (c. 102, 48 Stat. 522, 5 U. S. C. 673c), provides:

> "The weekly compensation, minus any general percentage reduction which may be prescribed by Act of Congress, for the several trades and occupations, which is set by wage boards or other wage-fixing authorities, shall be reestablished and maintained at rates not lower than necessary to restore the full weekly earnings of such employees in accordance with the full-time weekly earnings under the respective wage schedules in effect on June 1, 1932: *Provided*, That the regular hours of labor shall not be more than forty per week; and all overtime shall be compensated for at the rate of not less than time and one half."

STATEMENT.

No exception is taken to the statement of facts in petitioner's brief (Pages 4-8).

SUMMARY OF ARGUMENT.

Section 23 of the Act of March 28, 1934, is applicable to monthly as well as to hourly and per diem employees. The language of this section applies to both. The legislative history of the section shows no intent to discriminate against monthly employees. Neither is such an intent to be inferred from overtime legislation subsequent to 1934 or from administrative practice before and after the 1934 Act.

The method employed by the Court of Claims in computing respondent's overtime was proper. The method of computing a day's pay set forth in the Act of June 30, 1906, has no application to overtime pay. That Act was concerned not with overtime pay but with fixing a formula for paying compensation for less than a month's services.

ARGUMENT.

I. The Act of March 28, 1934 Applies to Employees of the Panama Canal Whose Compensation is Fixed by a Wage Fixing Authority on a Monthly Basis.

1. The language of Section 23 applies to monthly employees.

Section 23 of the Act of March 28, 1934, provides:

> "Sec. 23. The weekly compensation, minus any general percentage reduction which may be prescribed by act of Congress, for the several trades and occupations, which is set by wage boards or other wage-fixing authorities, shall be reestablished and maintained at rates not lower than necessary to restore the full weekly earnings of such employees in accordance with the full-time weekly earnings under the respective wage schedules in effect on June 1, 1932: *Provided*, That the regular hours of labor shall not be more than forty per week; and all overtime shall be compensated for at the rate of not less than time and one half."

According to the language of this section an employee is entitled to the benefits of its provisions if he is engaged in

one of the "several trades and occupations" whose compensation "is set by wage boards or other wage-fixing authorities." The section cannot be limited to hourly or per diem employees without adding a qualification not expressed in the language used. As stated by the court below (R. 20) the language of Section 23, on its face, is just as applicable to monthly employees as to hourly or per diem employees.

Petitioner does not question the fact that respondent's compensation was fixed by a wage board or other wage-fixing authority. It does not seriously urge that respondent was not engaged in a trade or occupation.[1]

It is not altogether clear, however, whether petitioner admits or denies that the language of Section 23 is just as applicable to monthly as to hourly or per diem employees.[2]

First it states that the court below relied upon the broad language of the statute in holding that it applied to monthly employees, and that this construction can only be supported if the language of the Act is read out of the context of its history and purposes. This would appear to be an admission that the language of the Act applies to monthly employees. Petitioner's reference to the "elliptical language" of the Act also indicates strongly that it seeks to add to Section 23 a limitation not expressed in its language.

[1] At pages 19-20 of its brief, petitioner states that while there has been no judicial definition or prior legislative use of the words "trades and occupations", a regulation for navy yard wage boards fixing wage schedules for hourly or per diem employees uses this phrase. Petitioner does not urge, however, that these words thereby become words of art showing on their face an intent to limit Section 23 to hourly or per diem employees. In this connection it is interesting to note that the Comptroller General ruled (14 Comp. Gen. 156, 162) that supervisory employees paid on a monthly basis are engaged in "trades and occupations" within the meaning of Section 23, and that in the court below petitioner admitted that the Comptroller General was reasonable in ruling that a supervisor, as a rule, retains the characteristics of a craftsman more than he attains those of an administrator.

[2] In this connection it should be noted that the Comptroller General has ruled that Section 23 does apply to monthly employees in so far as it provides for a 40-hour week and against reduction in compensation. 14 Comp. Gen. 156.

Later, however, petitioner urges that the phrases "weekly earnings" and "weekly compensation" limit application of the Act to hourly and per diem employees. It is argued that the weekly compensation of such employees can be readily ascertained by adding the number of hours or days worked each week, but that applying the Act to monthly employees involves practical difficulties. Respondent is aware of no doctrine of construction that would nullify the plain meaning of a statute for any such reason. In fact, the courts have not hesitated to give effect to the language of at least two statutes, though it involved determining a method of computation to be used in computing the hourly pay of employees paid by the month or week.

In *Nelson* v. *St. Joseph & G. I. Ry. Co.*, 199 Mo. App. 635, 205 S. W. 870, a railroad employee sued to recover overtime pay under the Act of September 3, 5, 1916 (c. 436, 39 Stat. 721), popularly known as the Adamson Act. That Act provided for a standard eight-hour day for railroad employees; that pending a report by a commission created by the Act, their compensation should not be reduced below the existing standard day's wage; and that for time in excess of eight hours they should be paid at a rate not less than the pro rata rate for the standard eight-hour work day. The defendant contended that the Act should not apply because the contract of employment provided for a monthly rather than a daily wage. The Court, however, rejected this contention after finding that the contract of employment provided plaintiff should work four days out of every five. The Court then ascertained the number of work days in each month by multiplying calendar days by four-fifths, and arrived at the standard day's wage for each month by dividing the monthly compensation by the number of working days during the month.

Attention is also directed to the Act of June 25, 1938 (c. 676, 52 Stat. 1060, 1062, 1063), also known as the Fair Labor Standards Act of 1938. This Act provides that employees shall be paid certain minimum hourly wages, and

that an employee shall not be employed for a workweek longer than a certain number of hours unless he receives overtime compensation at a rate not less than one and one-half times the regular rate at which he is employed. The courts have not hesitated to apply this act to employees paid a weekly or monthly compensation even though this involved the computation of an hourly wage and no method of computation were prescribed in the Act. For example, in *Overnight Motor Transp. Co.* v. *Missel*, 316 U. S. 572, 580, this Court held that for purposes of computing overtime the regular hourly rate of an employee paid by the week should be determined by dividing his weekly compensation by the number of hours he worked each week even though he worked a varying number of hours each week. In *St. John* v. *Brown* (District Court, N. D. Texas) 38 F. Supp. 385, the court computed the hourly rate of an employee paid by the month by multiplying the monthly salary by twelve, dividing the annual compensation by fifty-two, and dividing the weekly compensation by sixty-three since his contract of employment contemplated working nine hours a day seven days a week. See also, *Allen* v. *Moo* (District Court, D. Idaho, N. D.), 39 F. Supp. 5.

It is therefore obvious that the use of the words "weekly compensation" in the Act of 1934 gives rise to no serious difficulty in applying the Act to monthly employees, and cannot be construed to limit the Act to hourly or daily employees. The logical explanation of the use of this phrase is simply that any legislation dealing with maximum hours of work and overtime must provide some definite period of time as a standard. In the Fair Labor Standards Act the standard was hours per week, and in the Adamson Act it was hours per day. In both cases it has been held that the standard should be applied to monthly employees.

The words of Mr. Justice Douglas in *Tennessee Coal Company* v. *Muscoda Local*, 321 U. S. 590, 597-598, seem especially appropriate here:

> "But these provisions, like the other portions of the Fair Labor Standards Act, are remedial and humanitarian in purpose. We are not here dealing with mere chattels or articles of trade but with the rights of those who toil, of those who sacrifice a full measure of their freedom and talents to the use and profit of others. Those are the rights that Congress has specially legislated to protect. Such a statute must not be interpreted or applied in a narrow, grudging manner. Accordingly we view §§ 7 (a), 3 (g) and 3 (j) of the Act as necessarily indicative of a Congressional intention to guarantee either regular or overtime compensation for all actual work or employment. To hold that an employer may validly compensate his employees for only a fraction of the time consumed in actual labor would be inconsistent with the very purpose and structure of those sections of the Act. * * * "

Petitioner also contends that because Section 23 states that the weekly compensation, minus any general percentage reduction by Congress, shall be "reestablished", Congress intended to deal with employees whose compensation had actually been reduced by means other than a percentage reduction. Any such construction would, of course, disqualify hourly and per diem employees whose weekly compensation had not been reduced prior to the Act. It is not thought that petitioner would wish to go so far. The Comptroller General has consistently applied Section 23 to hourly and daily employees without inquiring whether their weekly compensation had been reduced prior to the Act. See 13 Comp. Gen. 265; 14 Comp. Gen. 156. These decisions have not been questioned by petitioner. Moreover, petitioner ignores the succeeding words "and maintained", which make it clear that one of the purposes of the Act is to prevent wage-fixing authorities from reducing existing compensation as well as to restore compensation which had already been reduced.

In conclusion, then, it is submitted that the language of Section 23 requires that its benefits be applied to all trades and occupations whose compensation is fixed by wage fixing

authorities, whether the compensation is by the hour, day or month.

2. The legislative history of Section 23 does not indicate it is to be applied only to per diem and hourly employees.

There is no reason to suppose from the legislative history of Section 23 of the Act of March 28, 1934, that it was intended to apply only to hourly and per diem employees.

The 1934 Act was the last of the "Economy Acts". The first, the Act of June 30, 1932 (c. 314, 47 Stat. 382, 389), permitted the reduction of the compensation of federal employees by means of a system of furloughs without pay. The Act of March 20, 1933 (48 Stat. 8, 13), provided for a general percentage reduction up to 15 per cent. The Act of March 20, 1933 did not, as petitioner indicates, abolish the furlough system. On the contrary it only prohibited furloughs in excess of 90 days for employees of the classified service and contained no prohibition or limitation upon the power to furlough employees whose compensation was fixed by wage-fixing authorities. Furthermore, petitioner admits in its brief (footnote 11, page 21) that the so-called independent power to furlough to keep within appropriations or because of failure of work was not affected by the Act of March 20, 1933. H. R. 6663, the bill which, as later amended, became the Act of March 28, 1934, continued a maximum percentage reduction. It did not prohibit furloughs without pay and it did not contain the provision which became Section 23 of the Act.

It was at this point that N. P. Alifas, representative of the Metal Trades Department, American Federation of Labor, submitted to the Senate Committee on Appropriations, the statement which is set out in Appendix A to petitioner's brief.

In this statement Mr. Alifas urged that all pay reductions, including the 15 per cent reduction and the prohibition against automatic and administrative promotions, be

eliminated from the bill, and requested the following amendment:

> "*Provided*, That the rates of compensation for the several trades and occupations, which are set by wage boards or other wage-fixing authorities, shall be reestablished and maintained at rates not lower than the respective wage schedules in effect on June 1, 1932; and that the Navy Department and other departments and independent establishments of the Government are hereby directed to restore to employees any reduction in pay which they have received since June 30, 1932, in addition to the 15 percent Congressional cut, without increasing the present hours of service; and that the respective departments and independent offices are hereby authorized to incur such deficiencies as may be necessary to put this provision into effect."

He lists several evils, past and future, which this amendment is designed to remedy.

First, speaking of navy yard employees only, he states that per diem employees have had their hours reduced to an average of 40 per week by furloughing them without pay every alternate Monday, thus reducing their base pay 22 per cent rather than 15 per cent. This statement is petitioner's principal reason for urging that the Act be applied only to hourly and per diem employees. While Mr. Alifas' statement cited as an example per diem and per hour navy yard employees, respondent does not believe and petitioner has not established that it applied only to such employees. Carried to its logical conclusion petitioner's contention would exclude hourly and per diem employees whose workweek had not been so reduced. We are unable to find that such a position has ever been taken by either the Comptroller General or petitioner.

Second, apparently speaking generally with reference to per diem employees, Mr. Alifas stated that employees had been discharged and reemployed in lower grades. While he is speaking of per diem and hourly employees, it is a situation which no doubt happened also to monthly em-

ployees. There is no reason to suppose that Mr. Alifas wished to discriminate against monthly employees so situated.

Third, Mr. Alifas points out that there is nothing in the bill to prevent wage boards from cutting wage rates in the future. This is just as true of monthly rates as it is of hourly or per diem rates. Here again, while Mr. Alifas is speaking on behalf of per diem employees, there is no reason to suppose that he intended to discriminate against monthly employees. It would be just as reasonable to infer from his representation of per diem employees that his request for the elimination of prohibition against automatic and administrative promotions should apply only to hourly or per diem employees.

For the reasons stated above it is, therefore, submitted that no intent to discriminate against monthly employees can be inferred from Mr. Alifas' statement. In fact the concluding paragraph of his statement shows clearly that he is only attempting to prevent discrimination against per diem employees.

The bill was reported by the Senate Committee on Appropriations without the requested amendment (S. Rep. No. 294, 73d Cong. 2d Sess.). Later, on the floor of the Senate, Senator Thomas offered an amendment which became Section 23 of the Act of March 28, 1934 (78 Cong. Rec. 2977). While he stated that this amendment put employees back on the same status they occupied in July of 1932 and in this connection referred to "hourly pay", it is clear that the Act does much more than this. By requiring 1932 weekly compensation for a 40-hour week it increases the hourly rates. It creates overtime pay for work in excess of 40 hours. It also prevents any reduction in rates by wage-fixing authorities. It is obvious, therefore, that the purpose stated by Senator Thomas was not the only purpose of the amendment. As shown, *supra*, Mr. Alifas stated that one of the purposes of his proposed amendment was to prevent prospective wage cuts by wage boards—a pur-

pose just as applicable to monthly as to hourly employees. There is no reason to suppose that Senator Thomas did not have the same purpose in mind in submitting his amendment. Nor is there any reason to assume that he intended to exclude hourly employees whose hours had not been reduced merely because he stated that the amendment would put employees back on the same status they occupied in 1932. The Act has never been so construed.

Later Congress passed the bill including Section 23. The President then vetoed it primarily because of provisions for veterans benefits, and also because it contained "discriminatory provisions, such as paying employees in some departments of the Government 48 hours' pay for 40 hours' work" (House Doc. 291, 73d Cong. 2d Sess., p. 2). In urging on the floor of the Senate that the bill be passed over the President's veto, Senator Cutting pointed out that the Administration was already trying, under the N. R. A. to pay the same amount of wages for shorter periods of labor (78 Cong. Rec. 5574). From this statement and from the contention that at a much later date the Court of Claims construed the N. I. R. A. as not increasing the compensation of salaried employees, petitioner suggests that Congress did not intend Section 23 of the 1934 Act to apply to salaried employees. We do not feel that even if N. R. A. laws did not apply to salaried "employees" it would furnish any reason for holding that the Act of March 28, 1934 did not apply to monthly employees. However, respondent is unable to find anything that exempts "salaried" employees from N. I. R. A. laws and an examination of the opinion of the Court of Claims in the case of *Steel Products Engineering Co.* v. *United States*, 90 C. Cls. 513, 517, reveals that it was there held that certain "salaried" employees were excluded because it was not proven that their hours or wages in that case had been effected by the N. R. A. laws. In any event this decision was rendered long after the enactment of the Act of March 28, 1934.

It is submitted, therefore, that even if the language of Section 23 were ambiguous, its legislative history does not indicate an intent to limit its application to hourly and per diem employees.

3. Subsequent legislation does not indicate that Section 23 should be limited to hourly and per diem employees.

Petitioner sets out several later statutes as showing that the 1934 Act was intended to apply only to hourly or per diem employees.

The first is the Act of June 26, 1936 (c. 832, 49 Stat. 1969) which amended Section 23 of the 1934 Act to permit the adjustment of regular hours of duty of employees under the Classification Act to the 40-hour week of employees covered by the 1934 Act, and authorized the adjustment of "hourly rates" of compensation of employees under the Classification Act so as to make the aggregate compensation for a 40-hour week equal to the compensation for a full week prior to March 28, 1934. As petitioner points out, the motivating force behind the 1936 Act was the administrative difficulty encountered by the Bureau of Engraving and Printing in coordinating the 40 hour week of employees covered by Section 23 of the 1934 Act with the 44-hour week of hourly employees covered by the Classification Act. Even if it were assumed that the legislative history of the 1936 Act and the use of the words "hourly rates" indicated an intent that the 1936 Act should apply only to hourly employees this would have no effect on monthly employees under the 1934 Act. If anything, the specific reference to "hourly rates" in the 1936 Act and the lack of any such phrase in the 1934 Act, would indicate that the latter was not limited to hourly employees.

Petitioner next refers to the Act of June 28, 1940 (c. 440, 54 Stat. 676, 678) which provided for a workweek of 40 hours for the Navy Department and Coast Guard during the national emergency; for overtime pay at not less than one and one-half times the regular rate for monthly, per

diem hourly and piecework employees whose wages were set by commandants of the navy yards, and for professional, subprofessional and certain other employees of the CAF service as defined by the Classification Act. The Act also contained a proviso that in determining the overtime pay of per annum Government employees the pay for one day should be considered to be 1/360 of their per annum salaries. Since the only employees referred to above who received per annum salaries were those under the Classification Act, the natural assumption would be that another method had already been authorized for monthly, per diem and hourly employees whose wages were set by wage-fixing authorities. While it is true, as pointed out by petitioner, that the committee reports on the bill stated that this was the first time overtime had been "allowed" to monthly and annual employees, and was a "departure from the pratice" theretofore followed, it is equally true that the committees were mistaken on this point. For example, in addition to Section 23 of the 1934 Act, the Act of May 24, 1885 (c. 308, 25 Stat. 157), the Act of February 28, 1925 (c. 368, 43 Stat. 1053, 1059, 1061), and the Act of February 17, 1931 (c. 206, 46 Stat. 1164) authorized the payment of overtime to certain postal employees receiving an annual compensation. Under the 1885 Act this Court awarded overtime to a letter carrier. *United States* v. *Post*, 148 U. S. 124. It would be a dangerous doctrine which permitted the mistaken assumption of committees to control the interpretation of earlier legislation.

Petitioner also refers to the Act of October 21, 1940 (c. 963, 54 Stat. 1205) which provided for overtime pay at one and one-half times the regular rate, to such monthly, per diem, hourly and piece work employees of the field services of the War Department and of the Panama Canal whose wages were set by wage-fixing authorities, and to certain employees under the Classification Act, as should be designated from time to time by the Secretary of War or the Governor of the Panama Canal. It also pro-

vided that in determining overtime pay of per annum employees the pay for one day should be 1/360 of their annual salaries. As in the previous Act, this language indicates that a different method for computing overtime for monthly, hourly and per diem employees whose wages were fixed by wage-fixing authorities had already been authorized. The legislative history cited by petitioner does not contradict this. It shows only that proponents of the bill understood that overtime was already authorized for certain employees in War Department Arsenals and in the Panama Canal, but was not authorized for others. At one point it was stated that the bill would make the pay of annual workers consistent with that of others, but no reference is made to monthly workers. The reference to annual workers would appear to be to those covered by the Classification Act.

The next statute referred to by petitioner is the Act of June 3, 1941 (c. 168, 55 Stat. 241) which authorized payment of overtime compensation to annual employees of the field services of the War Department, the Panama Canal, the Navy Department and the Coast Guard engaged in the same overtime work as employees specified in the Acts of June 28, 1940 and October 21, 1940, *supra*. Introducing the bill which became the Act of June 3, 1941, Senator Reynolds stated that it placed per annum employees on the same basis as laborers and mechanics (87 Cong. Rec. 4275-4276). The natural inference to be drawn is that employees other than annual employees were already entitled to overtime.

The Joint Resolution of December 22, 1942 (c. 798, 56 Stat. 1068) extended overtime compensation to all civilians of the Government with a few exceptions one of which was those whose wages were fixed on a daily or hourly basis and adjusted from time to time in accordance with prevailing rates by wage boards or similar administrative authority. Petitioner contends that this is a recognition that monthly employees whose compensation was fixed by wage boards

were within the class for which overtime legislation was necessary. There are at least two other possible explanations of this Act. Congress may have intended to change the overtime basis for such monthly employees, or it may have been unaware that wage-fixing authorities fixed monthly rates as well as per diem and hourly rates. There is nothing in the Senate Report quoted in petitioner's brief inconsistent with these possibilities.

Lastly, petitioner relies on the Act of May 7, 1943 (c. 93, 57 Stat. 75), which provides for overtime pay for most Government employees including employees whose wages are fixed on a monthly basis by wage-fixing authorities, but excluding hourly or daily employees whose wages are so fixed. Petitioner urges that this shows Congress assumed that overtime pay had already been provided for hourly and per diem employees but not for monthly employees, under Section 23 of the 1934 Act. It can just as well be argued, however, that Congress intended to change the overtime compensation authorized for monthly employees under the 1934 Act to that received by annual workers employed under the Classification Act.

When all the subsequent legislation is considered it fails to reveal that Congress assumed that the 1934 Act did not apply to monthly employees. In fact the contrary is to be inferred. As pointed out, *supra*, the fact that the Act of June 28, 1940, and the Act of October 21, 1940, specified a method for computing overtime for annual employees but did not do so for the monthly, per diem and hourly employees mentioned in those acts strongly suggests that another method had already been authorized for monthly, per diem and hourly employees. Likewise, the fact that the Act of June 3, 1941, *supra*, further extending overtime pay, applied only to annual employees indicates that monthly employees had already been covered. The other Acts have been shown to be inconclusive with respect to indicating Congress' intent regarding the 1934 Act. Petitioner's argument that much of the later legislation becomes mean-

ingless if it is assumed that the 1934 Act applied to monthly employees is just as true with respect to hourly or daily employees, who were given under the Act of June 28, 1940, and the Act of October 21, 1940, exactly what they were entitled to under the 1934 Act. In all the committee reports and congressional debates referred to by petitioner with respect to legislation after 1934, only once is it stated that overtime compensation to monthly employees is a departure from the practice previously followed. Even here it has been shown that the committee reports on the bill which became the Act of June 28, 1940, were incorrect in so far as they made similar statements concerning annual employees. Certainly subsequent legislative history of such an equivocal nature should not be permitted to limit an Act which by its terms and purposes is equally applicable to monthly, per diem and hourly employees.

4. Administrative practice does not require that Section 23 be limited to hourly and per diem employees.

(a) *Practice After Enactment of Section 23.*

In Appendices B, C, and D to its brief, petitioner sets out several interdepartmental letters which, it is urged, establish an administrative interpretation of the 1934 Act limiting that Act to hourly and per diem employees. While respondent is not aware that administrative interpretation can be established by any such hearsay statements, such statements are not sufficient to establish the administrative practice urged by petitioner.

In the first place, the administrative practice to which this Court has looked for aid is the practice of the agencies charged with administration of the statute and not that of the Comptroller General. *Alaska Steamship Co. v. United States*, 290 U. S. 256, 264. As petitioner here concedes, the interpretations upon which it relies were based upon rulings of the Comptroller General. Obviously they do not represent the independent interpretation of the agencies involved.

Moreover, the rulings of the Comptroller General, upon which the agencies relied, take an impossible position. In 14 Comp. Gen. 156 he ruled that Section 23 applied to certain monthly employees of the Panama Canal so far as reduction of pay and hours of work were concerned but did not apply for purposes of overtime compensation. Not even petitioner contends that Section 23 should be so interpreted, but now contends that Section 23 has no application to monthly or annual employees. Obviously the interpretation by the Comptroller General upon which the agencies relied cannot be the basis for inferring that Congress meant to exclude monthly employees.

Petitioner also suggests that the so-called administrative practice to exclude monthly employees under Section 23 was known and ratified by Congress at the time that it passed the Act of July 9, 1937 (c. 470, 50 Stat. 486), which reaffirmed the President's right to fix conditions of employment in the Panama Canal but provided that the Act should not affect the application of Section 23 of the 1934 Act.

The letters from the Governor of the Panama Canal and the Secretary of War which are supposed to have informed Congress of such practice appear in Appendices E and F to petitioner's brief. As stated by the Court below (R. 22), nothing in these letters would suggest to Congress that Section 23 had been interpreted to exclude monthly employees. In fact the opposite is to be inferred from a statement in one of the letters (page 70 of petitioner's brief) that it freezes the "salaries" of the employees to which it applies. There is nothing in these letters or elsewhere to show that Congress knew of any ruling of the Comptroller General prohibiting the payment of overtime to monthly employees. Even if Congress had known of his position it can hardly be urged that it would adopt an interpretation applying the Act to monthly employees for some purposes but not for other purposes.

(b) *Practice before Enactment of Section 23.*

It is not seen what bearing prior acts and administrative practice under such acts have upon the interpretation of the present Act.

Admittedly the Act of March 3, 1883 (c. 128, 22 Stat. 531, 563) and the Act of March 15, 1898 (c. 68, 30 Stat. 277, 316), prohibited the payment of overtime to clerks and other annual employees of the Executive Departments. However, the Act of May 24, 1885, *supra*, the Act of February 28, 1925, *supra*, and the Act of February 17, 1931, *supra*, provided for overtime compensation for certain postal employees paid on an annual basis. As shown *supra*, this Court allowed overtime pay, under the 1885 Act, to an annual employee in the case of *United States* v. *Post*. Overtime compensation had also been provided for other employees paid on an annual basis such as customs inspectors, immigration officials, and meat inspectors. See 19 U. S. C. 267; 8 U. S. C. 109a, 109b; 7 U. S. C. 394. It cannot, therefore, be said that Congress made a radical change when it extended overtime pay to employees whose compensation was fixed on a monthly basis by wage-fixing authorities. Even if this were a radical change respondent is aware of no static principle of statutory construction which would prohibit a change in existing law.

The earlier legislation authorizing wage-fixing in the Navy Department,[3] the Government Printing Office,[4] the Bureau of Engraving and Printing,[5] and the Panama Canal,[6] cannot possibly be construed as requiring payment of overtime to monthly employees and therefore the fact that it may have been the customary practice under such legislation to limit overtime pay to hourly and per diem

[3] See Act of July 14, 1862 (c. 164, 12 Stat. 561, 564); Act of July 16, 1862 (c. 184, 12 Stat. 587); R. S. 1545; Act of March 3, 1909 (c. 255, 35 Stat. 753, 755).

[4] See Act of June 7, 1924 (c. 354, 43 Stat. 658; 44 U. S. C. 40).

[5] See Act of May 15, 1930 (c. 289, 46 Stat. 335, 345); Act of February 23, 1931 (c. 277, 46 Stat. 1217, 1226); Act of July 5, 1932 (c. 430, 47 Stat. 580, 588).

[6] See Act of August 24, 1912 (c. 390, 37 Stat. 560, 561).

employees cannot have any possible bearing on the interpretation of the 1954 Act, which, by its terms, requires payment of overtime to monthly as well as per diem or hourly employees.

Petitioner also urges that there is an equitable basis for distinguishing between monthly employees and hourly or per diem employees in that the former have greater security of tenure, occupy more important posts, receive higher rates of pay, and enjoy more favorable leave provisions. However, the legislation authorizing the fixing of wages does not prevent monthly employees from being laid off any more than in the case of hourly or per diem employees. Nor has it been shown that the former actually enjoyed any greater security of tenure. It should also be noted that in the Panama Canal, at least, there were employees such as electricians whose monthly compensation was computed from hourly rates in the navy yards in the United States. 14 Comp. Gen. 156, 163. It can hardly be said that they received higher rates of pay or occupied more important posts than hourly or per diem employees in the Panama Canal. The difference between leave granted the monthly and hourly employees in the Panama Canal is not substantial.

II. The Method Employed by the Court of Claims in Computing Overtime Compensation is Proper.

The Court of Claims computed overtime by multiplying respondent's monthly compensation by 12, dividing the resulting annual compensation by 52, and dividing the weekly figure by 5 to ascertain the compensation for an eight-hour day. It then multiplied this daily rate by one and one-half for the sixth day worked in each week in order to arrive at the overtime compensation (R. 25-26).

Petitioner contends that this method was incorrect because it was inconsistent with the Act of June 30, 1906, (c. 3914, 34 Stat. 697, 763). This Act provides that in making payments for a fractional part of a month the daily rate

of pay shall be 1/30 of the monthly compensation. Petitioner states that Congress has never authorized deviation from the 360-day basis set forth in the 1906 Act, and that accordingly the same basis should be used in computing respondent's daily compensation.

It is obvious, however, as the language of the 1906 Act shows, that it was intended only as a basis for computing pay for a fractional part of a month, and not for computing overtime. Moreover, in the Act of February 28, 1925 (c. 368, 43 Stat. 1053, 1059), Congress provided for overtime pay for certain annual postal employees, to be calculated upon the basis of daily compensation of 1/306 of their annual compensation. No mention was made of the 1906 Act. As the 1925 Act states, it was based upon 306 working days per year, the 306 figure being computed by subtracting Sundays and legal holidays from 365. This method, of course, is based upon a six-day work week. If the same method is used for the five-day work week, which is required by the 40-hour work week provisions of Section 23 of the 1934 Act, Saturdays as well as Sundays should be subtracted from the number of days in a year. This would give substantially the same daily rate as used by the Court of Claims. In subtracting holidays from the total number of days in a year, the method prescribed by the 1925 Act is more liberal than that employed by the Court of Claims.

It is interesting to note that under the Fair Labor Standards Act of 1938, the court in *St. John* v. *Brown*, *supra*, computed the hourly rate of a monthly employee by multiplying the monthly compensation by 12, dividing the result by 52, and dividing the weekly compensation by the contemplated working hours per week. Up to the last step the methods used by the federal district court and by the Court of Claims are identical. The reason for the different methods employed in the final step is obvious. While the Fair Labor Standards Act of 1938, *supra*, establishes a 40-hour work week, and provides for overtime at one and one-half times the regular rate of compensation, it does not

prevent a reduction of the regular rate of compensation so long as it does not fall below the minimum hourly rate fixed in the Act. Section 23 of the 1934 Act, on the other hand, prohibits a reduction in weekly compensation by reason of a reduction of working hours per week.

The method suggested by petitioner simply fails to comply with the direction of Congress that employees covered by Section 23 shall be paid for a 40-hour week not less than they were paid for a full week on June 1, 1932. In effect, petitioner contends that respondent's regular daily compensation be figured on the basis of a 56-hour work week rather than a 40-hour work week.

For the reasons stated above, it is submitted that the method employed by the Court of Claims in computing respondent's overtime pay was proper.

CONCLUSION.

For the reasons stated in the opinion by the Court below, as well as those hereinabove set out, it is respectfully submitted that the judgment below should be affirmed.

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SUPREME COURT OF THE UNITED STATES.

No. 134.—October Term, 1944.

The United States, Petitioner, vs. Louis Townsley. } On Writ of Certiorari to the Court of Claims.

[January 15, 1945.]

Mr. Justice Roberts delivered the opinion of the Court.

The parties agree that the principal question presented is whether Section 23 of the Independent Offices Appropriation Act, 1935,[1] in so far as it provides for overtime compensation for services in excess of 40 hours per week, applies to Government employes of the Canal Zone whose compensation is fixed on a monthly basis. The Court of Claims answered in the affirmative.[2] If we take the same view, a subsidiary inquiry is whether that court adopted the right method for calculating the overtime compensation.

The section, in full, is:

"The weekly compensation, minus any general percentage reduction which may be prescribed by Act of Congress, for the several trades and occupations, which is set by wage boards or other wage-fixing authorities, shall be reestablished and maintained at rates not lower than necessary to restore the full weekly earnings of such employees in accordance with the full-time weekly earnings under the respective wage schedules in effect on June 1, 1932: *Provided*, That the regular hours of labor shall not be more than forty per week; and all overtime shall be compensated for at the rate of not less than time and one half."

Between March 28, 1934, and August 31, 1939, the respondent was employed by the Panama Canal successively as operator, chief operator, and master of a dredge, and was paid on a monthly basis at rates fixed by the Governor of the Canal Zone upon recommendation of a wage board. The respondent's normal work week consisted of six eight-hour days. He retired August 29, 1939, and then, for the first time, asserted that under the Act he was

[1] Act of March 28, 1934, c. 102, 48 Stat. 522; 5 U. S. C. 673 c.

[2] — C. Cls. —, — F. Supp. —.

entitled to compensation at the rate of time and one-half for all hours worked in excess of 40 per week. In prosecution of his claim he instituted this suit March 14, 1940.

The Court of Claims held that he was engaged in one of the "trades and occupations" whose compensation "is set by wage boards or other wage-fixing authorities" covered by the Act. We think this conclusion is right and do not understand the petitioner now to contest it. The court further held that the statute embraced those employes of the Canal Zone whose wages are paid on a monthly basis. This the Government contests, relying on the words of the Act, on administrative practice and on legislative history. A statement of the background of the legislation and its application seems necessary to decision.

In 1923 Congress adopted the "Classification Act"[3] classifying the employment and fixing the compensation for different classes of employes of certain departments of the Government. It excluded from the terms of the Act certain occupations, including apprentices, helpers or journeymen in a recognized trade or craft and skilled or semi-skilled laborers, among others. Admittedly certain employes of the Panama Canal, including the respondent, were not covered by this Act. Their compensation was to be fixed by the President, or by his authority, under the Act of August 24, 1912,[4] specifically it was set by the Governor of the Panama Canal on the advice of a wage board.

The Act of March 28, 1934, with which we are here concerned, was the last of the so-called Economy Acts intended to decrease expenses by reduction of compensation and suspension of privileges of federal employes. By the first such Act, approved June 30, 1932,[5] a regular schedule of reduction of salaries, by a system of furloughs or reduction of the work week, was established.

By the Act of March 20, 1933,[6] Congress superseded the furlough system and provided for a reduction, not to exceed 15%, in the compensation of all employes. By the Act of March 28, 1934, this reduction was cut to 10% for a portion of the fiscal year 1934, and to 5% for the fiscal year 1935. Possible reductions in compensation imposed on federal employes were not, however,

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[3] 42 Stat. 1488 (5 U. S. C. 661, *et seq.*).
[4] c. 390, 37 Stat. 561, 48 U. S. C. 1305.
[5] 47 Stat. 382.
[6] 48 Stat. 8, 13.

limited to those prescribed in the cited statutes. Men were discharged and rehired in lower classifications at the lower wages applicable and were furloughed without pay, in order to keep within appropriations.

When the bill which became the Act of March 28, 1934 was under consideration, a representative of a labor organization appeared before a subcommittee of the Senate Committee on Appropriations and advocated legislation to prohibit certain discriminatory reductions in the wages of per diem Navy Yard workers. He pointed to the continuance of the practice of furloughing them one day in each two weeks, thus reducing the hours worked to 40 per week, and showed that this, in addition to the 15% reduction of pay required by the economy act then in force, actually cut their base pay over 22%. He also complained of other practices which had the effect of reducing their compensation. He expressed the fear that if Congress abolished the 15% level cut, wage boards would at once take action to reduce existing wage scales. He proposed a provision which would prohibit reduction of wages below the wage scales which were in effect June 1, 1932, but suggested no provision concerning hours of work or overtime pay. The draft he submitted was not embodied in the bill as reported.

Senator Thomas offered the present section 23 on the floor of the Senate, stating merely[7] "this amendment is offered to help the employees in the navy yards, the arsenals, the Panama Canal Zone, the Government Printing Office, and the Bureau of Engraving and Printing. It simply proposes to put them back on the same status they occupied in July of 1932. . . . the amendment adopted this afternoon restores their pay cut, it is true, provided that amendment remains in the law. This amendment proposes to give the employees of these several bureaus an increase in their pay even though they do not have to work an increased number of hours. At the present time they work 40 hours and get 44 hours' pay. Under the amendment it is possible that the board that has control of these employees will let them work 40 hours and they will possibly get 48 hours' pay, provided they get an increase of their hourly pay."

The amendment was adopted without further reference to it in either House of Congress. The President vetoed the bill, which

[7] 78 Cong. Rec. 2977.

was passed over his veto. On that occasion a Senator inquired whether certain language in the President's veto message referred to the provisions of Section 23 and the reply was that the Senator interrogated did not know whether this was so. We shall shortly see that the section did substantially more than Senator Thomas stated in his brief explanation.

Prior to the effective date of the Act, the respondent's regular hours of work were 48 per week, though he was often required to work 52. Shortly after § 23 became law, the Governor of the Panama Canal requested the Comptroller General to decide whether the section applied to employes of the Canal and whether it required payment of overtime to certain classes of employes, including the class to which respondent belonged. The Comptroller General ruled that the section was applicable to employes paid by the month as well as to those paid by the hour.[8] He did not directly rule on the right of monthly employes to be paid for overtime but his opinion indicates the view that they were not to be so paid since he stated: ". . . no change in the monthly or annual rate of compensation other than that required to pay a rate not lower than the rate per annum or per month paid June 1, 1932, less any applicable percentage reductions, would be authorized. That is to say, they are to receive the same monthly or annual compensation although their regular hours of duty may be reduced."

Notwithstanding this ruling the Governor attempted to reduce the monthly employes' compensation by putting them on an hourly basis. This he did by dividing the monthly salary paid June 1, 1932, by 224, the number of hours he estimated they worked per month made up of eight hours per day for six days per week, sixteen hours per month for occasional overtime and an allowance for occasional work on Sundays and holidays. This computation showed they had been worked 52 hours per week. Having thus ascertained what he deemed their hourly wages, he added 20% to the hourly wage, so that they would receive the same amount for a forty-hour week as they would theretofore have received for a forty-eight hour week, despite the fact that they had been working and had been paid for more than forty-eight hours according to his computation of their prior hourly earnings. The net result was substantially to reduce their monthly

[8] See 14 Comp. Gen. 158.

earnings. After complaint by the employes, the Governor submitted his action to the Comptroller General and requested reconsideration of the earlier decision.[9] That official reaffirmed his prior decision and disapproved the recomputation of monthly wages which the Governor had adopted. He ruled that the proper procedure was "to continue the payment of the same monthly rates of compensation even though there may have been a reduction in the number of hours per week and no overtime compensation is authorized", and added that "This is the general rule that has been adopted under the 40-hour week statutory provision for all employees paid on a monthly or annual basis." The Governor's submission and the Comptroller General's ruling make it clear that both understood that employes paid on a monthly basis could not be regularly worked more than forty hours a week. Several passages in his decisions also indicate that the Comptroller General was of opinion that monthly employes should not be paid overtime. The rulings were definitely that employes whose weekly wages would be reduced by reducing their work hours must have those wages restored to the 1932 wage level, and that employes who had not had their weekly wages cut because they were paid by the month and were worked 52 hours per week should not have their wages cut as a result of § 23 by the reduction of their work week to 40 hours.

Apparently relying on the Comptroller General's statement that employes on a monthly wage basis were not entitled to overtime, the Governor continued to work the respondent forty-eight hours a week but paid him no overtime. This in spite of his knowledge that the forty hour week limitation was also applicable to the respondent if other parts of § 23 were so applicable. In his second submission to the Comptroller General he stated his understanding of the latter's decision that monthly employes could not be worked more than forty hours a week. There is no evidence that the question of the legality of working the respondent overtime without paying him for it was ever submitted to the Comptroller General.

It seems evident that the Governor's action cannot be justified. If § 23 applied in the case of the respondent, his work week should have been forty hours. If, in spite of § 23, his monthly stipend covered every day and every hour of the month whether service

[9] See 14 Comp. Gen. 165.

was rendered or not, as the Comptroller General had said, so that respondent could not be paid for overtime, then he should not have been regularly worked overtime.

With this outline of the situation, we are brought to a consideration of the Government's contention that § 23 has no application to the respondent's compensation.

We turn first to the suggestion that the expressions "weekly compensation" and "weekly earnings" control all of the provisions of the section and that hence both the affirmative provisions and the prohibition contained in the proviso apply only to those employes who receive weekly wages. As the record, however, fails to indicate that any of the Government employes were paid by the week, it is said that the term "weekly" was used as a method of adjusting the wages of per hour or *per diem* employes because a forty hour work week could easily be calculated in their case as the measure of weekly work and compensation whereas it could not so readily be applied to monthly employes. But we think this suggestion does not comport either with the provisions or the obvious purpose of the legislation. The section commanded not only that wages reduced as a result of furloughs and uncompensated overtime should be reestablished but also that, for the future, such wages should be maintained at the June 1, 1932, level, subject only to the applicable percentage reductions provided by the Economy Acts. It sought to forbid indirect reduction of wages by the provision that a work week should consist of forty hours and that overtime, at one and one-half the regular hourly pay, should be paid for any hours worked beyond that weekly limit. As the test of what should constitute overtime was more conveniently calculated by using a work week, and the hours worked during any week, it was quite natural that Congress should use the phrases "weekly compensation" and "weekly earnings" in setting a floor under wages.[10]

If the Government is right, § 23 had no application to respondent and those in like case and the Governor could have maintained a fifty-two hour work week at the old rate of pay or could have cut the work week with a corresponding reduction in pay. The result would be, as the court below pointed out, that an Act

[10] Compare Overnight Motor Co. *v.* Missel, 316 U. S. 572; Walling *v.* Helmerich & Payne, Inc., 323 U. S. —; St. John *v.* Brown, 38 F. Supp. 385; Allen *v.* Moe, 39 F. Supp. 5; Nelson *v.* St. Joseph & G. I. Ry. Co., 199 Mo. App. 635.

of Congress, on its face applicable to all employes, including monthly employes, which declared that the weekly wages of employes "shall be reestablished and maintained at rates not lower than" the 1932 rate would for the first time have authorized the cutting of the wages of monthly employes below the 1932 level while the wages of all others were being restored to that level. As we have seen, the Comptroller General ruled that such a cut in respondent's pay was "in contravention of the plain terms of the statute."

We are clear that the Comptroller General was right in ruling that the statute applied not only to per diem or hourly employes but also to employes paid on a monthly basis, such as respondent, whose compensation was fixed by a wage board. We are also clear that, on the face of the statute, if the Governor, in the teeth of the statutory provision, worked such employes more than forty hours a week, the overtime provision of § 23 required payment at one and one-half straight time pay for the extra hours worked.

The Government seeks to avoid such a construction of the Act by invoking asserted administrative practice and legislative history. It relies heavily on the statement made to the subcommittee, to which we have heretofore referred. With respect to this statement, we think it enough to say that the spokesman was complaining about discriminations against employes paid by the day or the hour but he nowhere suggests the propriety of distinguishing between such employes and those paid on a monthly basis but worked more than forty hours per week. He advocates setting the June 1, 1932, standard as a minimum subject only to percentage reductions provided by the Economy Act. He envisages the fact that if the work week is reduced to forty hours and the June 1932 standard is thus reestablished, the result will be an increase in wages to the employes concerned. The considerations of equity on which he relies apply quite as much to employes paid by the month as to those paid by the day or hour. Moreover, as above stated, the draft he submitted was not adopted. On the contrary, one differently worded became § 23 of the statute.

The Government next relies on the fact that, prior to the adoption of § 23, no overtime was paid to employes who were on a monthly or annual basis. But, as we shall see, the full application of the principle of a work week limited to specified hours,

and payment of overtime for extra hours, was gradually adopted by the Congress, and the fact that the old practice was abolished piecemeal can have little weight in determining whether, as respects the employes embraced in its terms, § 23 abolished the distinction amongst those embraced in trades and occupations whose compensation was fixed by wage boards. Moreover, the section essayed to deal only with a special class of employes whose working conditions are more nearly comparable to those of men employed in private industry. There may, therefore, have been valid reason for establishing, as respects all of these employes, a different rule from that generally followed in Government departments.

The Government also relies on the prior practice in the Canal Zone, but we think this inconclusive. By the Act of August 24, 1912,[11] the President was empowered to appoint employes of the Canal Zone. The Act provided that "the compensation of such persons shall be fixed by the President, or by his authority, until such time as Congress may by law regulate the same" (§ 4). By Executive Order of February 2, 1914, the President established overtime for per diem and hourly workers but forbade overtime for those paid on a monthly or annual basis. Congress did undoubtedly legislate further on the subject in § 23 of the Act of 1934. The administrative practice prior to the adoption of the section is, therefore, of no moment.

The Governor's attempt to reduce the compensation of the respondent by working him overtime and not paying him for his overtime, in the teeth of the statute and the Comptroller General's ruling, certainly cannot be accorded weight in construing the statute.

The Government produced at the trial of the case in the court below certain letters from the Navy Department, the Government Printing Office, and the Bureau of Engraving and Printing of the Treasury Department stating that they had interpreted § 23 as applying only to *per diem* and hourly employes, and that no overtime had been paid to employes working on a monthly or yearly basis. These letters do not state, however, that these branches regularly worked such employes overtime, as did the Governor of the Canal Zone, without paying for overtime work. Such evidence as there is in the record would seem to indicate the contrary.

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[11] *Supra* Note 4.

The Secretary of the Navy submitted certain questions respecting § 23 to the Comptroller General immediately after the enactment of the section. One was whether per-annum or per-month employes who worked in excess of 40 hours a week "because of an extraordinary emergency" should be paid overtime. The Comptroller answered in the negative referring to his decision rendered the Government Printing Office[12] in which he said that the regular hours of work of employes on an annual basis were required by § 23 to be fixed at not to exceed forty per week. In the same opinion rendered to the Public Printer he had ruled that such employes were not entitled to overtime. There is no evidence that the Secretary of the Navy or the Public Printer conceived that they could work per annum and per month employes more than forty hours a week without extra compensation except in cases of extraordinary emergency or that they ever pursued a practice like that of the Governor of the Panama Canal. It would seem, therefore, that the hours of monthly paid mechanical employes in the departments in question were reduced to 40 without any pay cut. Such action would be in accordance with the rulings of the Comptroller General. Thus the administrative construction of the Governor seems to stand alone and in contradiction to that of other heads of departments and offices of the Government, and, in this respect, worked a discrimination against the respondent and those in his class as contrasted with other employes who stood in the same relation. Certain it is that the Comptroller General never ruled that the standard of 40 hours a week with overtime could be disregarded in practice.

Finally, the Government argues that related legislation indicates Congress did not intend § 23 to apply to employes paid by the month or by the year. We think, however, that, on analysis, the course of legislation, considered as a whole, fails to sustain the contention. As we have said, adoption of the principle of limitation of working time and extra pay for overtime, in respect of Government employment, has been of gradual development.

As early as 1883 Congress authorized the Public Printer to pay extra prices in accordance with the customs of the trade and the justice of the case for extra work ordered in emergencies, performed on Sundays or legal holidays or at night, if performed by

[12] 13 Comp. Gen. 265.

other than regular night forces.[13] It is assumed that the employes embraced in this legislation were paid per diem or per hour. The provision for payment of overtime in the Public Printer's office has been continued in the successive statutes.[14]

In 1888 Congress prescribed an eight hour day with payment for overtime for letter carriers of the United States Postal Service[15], who receive annual salaries.

In 1911 provision was made for overtime pay of employes of the Customs Service required by the nature of their service to work after 5 P.M.[16] Such overtime pay was to be reimbursed the Government by the steamship companies whose business required such services.

In 1919 the Secretary of Agriculture was authorized to pay employes of the Bureau of Animal Industry, employed in industrial establishments in the inspection of meat, for overtime work.[17] Here again the Government was to be reimbursed by the establishment which required the working of overtime, but the compensation paid the inspectors was on an annual salary basis.

In 1940 an Act was passed[18] making the regular working hours of the Navy Department and the Coast Guard, and their field services "eight hours a day or forty hours per week" during the period of the national emergency. The Act set a different method of paying the overtime to monthly, per diem, hourly and piecework employes than that applied to employes paid by the year, but it is to be noted that the forty hour week and the overtime rate of one and one-half times the regular rate was applied to monthly employes.

The Government lays great stress on a report of the Committee on Naval Affairs reporting this legislation to the Senate.[19] In that report the Committee said, referring to the forty hour per week limit, and the payment for overtime: "In this regard, the

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[13] Act of January 13, 1883, 22 Stat. 402.

[14] See 44 U. S. C. 40.

[15] Act of May 24, 1888, 25 Stat. 157; cf. United States v. Post, 148 U. S. 124. See also 39 U. S. C. 117.

[16] Act of Feb. 13, 1911, § 5, 36 Stat. 901. See United States v. Myers, 320 U. S. 561.

[17] Act of July 24, 1919, 41 Stat. 241, 7 U. S. C. 394.

[18] Act of June 28, 1940, 54 Stat. 676, 678. This Act expired June 30, 1942.

[19] S. Rep. No. 1863, 76th Cong., 3d Sess., pp. 11-12.

provision for the payment of compensation [for overtime] to per annum and per month employees is a departure from the practice heretofore followed." . . . A similar statement was made in the House report.[20] The difficulty that arises in giving weight to these statements of the Congressional Committees is that the facts already recited show the reports were wrong in fact and apparently were based upon an inaccurate statement which was credited by the Committees.

In the same year Congress passed another Act on the subject of overtime.[21] In this it was provided:

"notwithstanding the provisions of any other law, compensation for employment in excess of forty hours in any administrative workweek computed at a rate not less than one and one-half times the regular rate is hereby authorized to be paid at such places and to such monthly, per diem, hourly, and piecework employees of the field services of the War Department and the field services of the Panama Canal whose wages are set by wage boards or other wage fixing authorities, . . ."

Such light as we gain from the discussion in Congress indicates that Congress already understood that overtime was payable to certain employes of the Panama Canal by virtue of § 23 of the Act of 1934, but that it was desired to extend the limitation of hours per week and the payment of overtime to employes of the field services of the Army and the field services of the Panama Canal. Thus, in the debate, Mr. Ramspeck, of the House Committee on Civil Service, said:[22]

"The Secretary of War and the Assistant Secretary of War . . . say that they have the legal authority now to pay overtime to certain employes of the War Department in the arsenals and at the Panama Canal, but as to others they have not this authority and this creates a bad administrative situation. They have recommended this bill, which has passed the Senate, and it is my understanding we have given the same authority to the Navy Department as to the Navy yards."

Finally, in 1942, by Joint Resolution, Congress provided for overtime pay for Government employes generally[23] including employes of Government-owned or controlled organizations and those of the District of Columbia whose positions are subject to the

[20] H. Rep. No. 2257, 76th Cong., 3d Sess., pp. 3-4.

[21] Act of October 21, 1940, 54 Stat. 1205. This Act expired June 30, 1942.

[22] 86 Cong. Rec. 13557.

[23] 56 Stat. 1068.

Classification Act of 1923. The resolution embodies a proviso excluding "those whose wages are fixed on a daily or hourly basis and adjusted from time to time in accordance with prevailing rates by wage boards or similar administrative authority serving the same purpose, . . .". From this proviso the Government argues that Congress believed that up to that time those whose monthly compensation was fixed by wage boards had not been entitled to overtime and that the resolution granted it to them for the first time. Whatever Congress may have thought or intended in respect of the proviso, we cannot ignore the fact that § 23 of the Act of March 28, 1934, on its face, applied to such monthly employes, that the Comptroller had so ruled, and that, so far as appears, the departments concerned had acted with that understanding, save only the Governor of the Panama Canal who, although so advised, had acted in the teeth of the statute

The same misapprehension with respect to the effect and administration of the Act of 1934 seems to have prevailed when the War Overtime Pay Act of 1943[24] was adopted. That Act, by a sweeping provision, granted overtime pay to all civil employes of the Government and all employes of Government-owned or controlled corporations, except those in the Government Printing Office, and the Tennessee Valley Authority. It specifically included *officers* and employes whose wages are fixed on a monthly or yearly basis by wage boards or similar authorities, and excluded employes whose wages are fixed on a daily or hourly basis by wage boards.

We think this summary of the legislation on the subject is not conclusive or even strongly persuasive as an aid to the construction of the Act under consideration as of the time when Congress adopted it. It seems that there was no very clear and general policy with respect to the payment of overtime until the exigencies of the war called for compensation of Government employes as a class on a basis similar to that adopted in private industry. When the time came to make such general provision, the more or less haphazard dealing with the subject theretofore seems not to have been clearly in mind.

We conclude that the Court of Claims properly held that § 23 applies in respondent's case and that he is entitled to recover for the overtime he was required to work.

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[24] Act of May 7, 1943, 57 Stat. 75, § 1.

We reach then the question whether the court adopted the correct method of calculating the overtime compensation. The respondent submitted a computation whereby he multiplied his monthly salary by twelve and divided the result by fifty-two to ascertain his weekly salary. He divided the weekly salary by five to obtain his daily pay for an eight hour day for each week that he had worked a sixth day. He took the number of weeks in which he had worked a sixth day and multiplied that number by the ascertained daily wage, plus one-half. The Government argued in the court below, and argues in this court, that the monthly wage of the respondent covered every day of the month because the Government hired his full time. As a result, it is said, his daily pay should be one-thirtieth of his monthly pay.[25] In this view, he has been paid straight time not only for the five days, or the forty hours, he should have been worked under § 23 but also for the sixth day he was required to serve. The result is that he should be granted only additional half pay for the sixth day of each week. But, according to this contention, the respondent will already have been overpaid for, according to the argument, he has been paid straight time for the seventh day of each week although he only worked six days and has, therefore, received additional overtime pay for the sixth day. The court below approved the respondent's method of reckoning and we think its decision correct. After the adoption of § 23 the respondent was in effect hired for a work week of forty hours, or a five day week, and his daily wage was to be determined on that basis. He has not been paid for the sixth day of each week and should recover straight time and one-half for the sixth day. This computation accomplishes this, and there is authority for resort to it.[26]

The judgment is

Affirmed.

Mr. Justice MURPHY concurs in the result. The CHIEF JUSTICE, Mr. Justice JACKSON and Mr. Justice RUTLEDGE dissent.

[25] The Government relies on the Act of June 30, 1906, 34 Stat. 763; 5 U. S. C. 84. That statute, however, was not addressed to the problem of a standard work-week of a limited number of hours and the calculation of overtime for hours worked in excess of the limit.

[26] See St. John v. Brown; Allen v. Moe, *supra*, Note 10.